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Free to Move, Right to Work, Entitled to Claim? Governing Social Security Portability for Mobile Europeans

Emma Carmel, Bożena Sojka with Kinga Papież

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Free to move, right to work, entitled to claim?

Governing social security portability for mobile Europeans

Emma Carmel, Bożena Sojka with Kinga Papież

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A note on authorship

The analytical framework, methodology and methods for this workpackage, were designed by the authors of this report, who also conducted the comparative transnational analysis, with contributions from all four research teams of TRANSWEL.

The empirical research on the four transnational cases, and eight sets of national social security regulations, including documentary analysis, key informant and policy expert interviews was conducted by the four research teams of TRANSWEL in workpackage one:

Bulgaria-Germany: Anna Amelina, Hristina Markova, Jana Fingarova

Estonia-Sweden: Ann Runfors, Florence Fröhlig, Maarja Saar

Hungary-Austria: Elisabeth Scheibelhofer, Eszter Balogh, Nóra Regös, Clara Holzinger

Poland-UK: Emma Carmel, Bożena Sojka, Kinga Papież

Sections 6 and 7 of the working paper in particular relies heavily on outputs written by these research teams. Where possible, citations are given to both published and unpublished work of these teams.

Acknowledgements

Collaborative work requires collaboration.

Collaborative work in the interpretivist tradition requires ‘starting from scratch’, ‘stabs in the dark’, ‘going over everything again’, ‘making sure we’ve got this right’, and ‘working everything out’ while the research moves under your feet. And collaboration.

That is, it requires reflexive and collective thinking, trust, more than a modicum of goodwill, and a willingness to engage with how other people think.

The research, analysis, findings and conclusion presented in this working paper are a product of such collaborative interpretivist work: in workshops, large and small skype meetings, and innumerable email exchanges. They are also a product of the sharing (and overuse) of a great deal of goodwill and patience by the members of the TRANSWEL project. Accordingly, the authors of this working paper are deeply grateful to all researchers who worked on this workpackage for all the above.

Above all, the TRANSWEL researchers owe a great debt to all the participants in this part of our project. Civil servants, legal experts and policy stakeholders from across the European Union gave their time generously to share their expertise and experience, willingly explained misunderstandings and corrected errors, and good naturedly inducted the TRANSWEL researchers into the thickets of social security co-ordination in the EU.

Any outstanding mistakes, errors or omissions lie with the lead authors.

I Introduction

This working paper provides the formal output¹ from the first workpackage of the TRANSWEL research project (of a total of five workpackages). It presents the main results from 7 months of research work, which ran from February-September 2015. TRANSWEL is a transnational comparative study of regimes of social security portability in the European Union. The transnational element of the study has two aspects: the project investigates portability of social security in ‘the European Union’ (or ‘at EU level’), and between 4 transnational pairs of countries: Austria-Hungary, Germany-Bulgaria, Sweden-Estonia and UK-Poland. It compares social security portability for economically active mobile citizens in four policy areas: unemployment, family benefits, health and pensions.

The knowledge goal of the first ‘workpackage’ of TRANSWEL, reported in this working paper, was to “analyse the legal regulations on portability of social security, including national and supra-national regulations” (Amelina 2014).

This research phase of TRANSWEL was specifically focused on social security portability *regulations* (henceforth SSP regulation) but not in a descriptive manner. We had a particular interest in contributing to TRANSWEL’s aim of conceptualising, and identifying regimes of portability, and analysing the relationship of such regimes to experiences of inequality among EU migrants. Accordingly, the following questions were established to ‘operationalise’ the overall knowledge goal for the workpackage.

- How is the portability of migrants’ social security rights between the sending and the receiving country² in the EU structured in transnational and national regulations?
- How do welfare systems’ conditionalities organize, condition, and set limits to the acquisition and portability of social security rights?

This paper proceeds in eight main sections. Following this introduction, in section two, we discuss why portability matters and outline existing working definitions of SSP regulation in the literature. We problematize some of the assumptions of existing studies, outline a broader approach which addresses SSP regulation as matter of governance, and set out the key parameters of our empirical study.

In section three, we explain some of the key legislative points of reference that shape portability in the EU. We outline the key Directives and Regulations, and set these in a summary map of EU portability regulation, and identify how these regulations formally position the social security rights of EU migrants.

¹ One of the outputs was 5 policy briefs, summarizing the portability regulations in each of our four transnational cases and comparatively. The other output was a policy stakeholder seminar, convened in Brussels on 25 January 2016. The policy briefs and summary of the seminar are available at: www.transwel.org.

² The terminology ‘sending’ and ‘receiving’ country is not ideal. Indeed studies like TRANSWEL demonstrate how this terminology presents analytical problems when transnational mobility, including temporary migrations and return, are important elements of a study (Amelina and Faist 2012). Where we want to explore experiences and practices of portability in the context of diverse mobilities *between* countries, rather than one-time migration, ‘sending’ and ‘receiving’ is misleading terminology. We also would prefer not to privilege the ‘receiving countries’ in shaping portability experiences and practices (see Castles, 2016, Amelina et al 2015). Nonetheless, TRANSWEL is broadly framed in the policy and socio-economic context of mobility from specific EU8 member states to specific EU15 member states since 2004. We therefore refer to ‘EU8’ countries and EU15 countries, and sometimes reduce this, where it is analytically appropriate, to ‘sending’ and ‘receiving’.

Section four outlines the complex, overlapping and mutually shaping contexts which within which portability regulation takes place, is understood and negotiated by policy actors as well as by migrants. We identify three significant contexts for analyzing EU citizens' access to and portability of, social security. First, the broad historical context, which highlights the background to SSP regulation in the EU, and the importance of the timing of this research. Second, socio-political and institutional changes are explained, especially the political, economic and institutional implications of the 2004 and 2007 accessions along with the importance of welfare reforms in the EU of the last 20 years. Third, the significance of increased diversity in benefits that are included in the EU's SSP regulation, and the increased diversity of conditionality within welfare states is highlighted. The relevance of these contexts to our country-pair cases is also assessed.

In section five, we briefly describe the research process of this phase of the TRANSWEL research project, on which our paper reports. There is a separate methodological report to accompany this working paper, which provides more detail on the methods and the research process³.

Section six, drawing directly on reports produced by teams in the TRANSWEL project, provides summaries of portability regulation, and their transnational contexts, within our four country pair cases, contributing to answering our first research question. The section concludes with a comparative overview of these findings.

Section seven presents our empirical findings on the regulatory conditions that underpin how EU citizens' access to, and portability of, benefits is governed, to address our second research question. We explore similarities and differences across our transnational cases in four policy areas. In we address the implications of these arrangements for the generation of logics of inclusion, exclusion and stratification for three different categories of migrant (one-time, returnee, and temporary/circular).

Section eight draws together the different aspects of our findings to identify a new dynamic conceptualisation of portability regulation. By examining how these conditions vary by policy area in our transnational cases, we are able to identify sets of regulatory 'gateways' which set limit conditions to access and portability of social security for intra-EU migrants, which also vary by policy area and benefit type.

The paper concludes in section nine with observations about the empirical findings of this part of the TRANSWEL study, and their significance for interpreting the transnational governance of SSP in the European Union, and some wider reflections on the conceptual implications of our findings.

³ Available from www.transwel.org.

II Portability regulation in social security⁴

2.1 Existing studies of portability regulation

Portability of social security (SSP) is nearly as old as social security itself. Historically it was the strategy adopted to organise the social security of mobile workers between nationally organised and occupationally stratified social security schemes. Once key groups of industrial workers (notably miners) became entitled to social protection, from the end of the nineteenth century, mechanisms to recognise these protections across borders were needed. This applied both to the entitlements of (usually) male, skilled workers recruited from other countries to support national strategies for industrialisation, and to the entitlements of similarly skilled industrial workers exported from European imperial states to colonial dependencies. As such, portability regulation was a response to the challenge that migration poses to the closure and exclusionary logic of national welfare states, with their assumptions of social citizenship as the demarcation of membership, obligation and rights (Marshall 1950, Lister 1998, Ferrera 2005). Thus, portability of social security was both embedded in specific national political economies of welfare and work, and also a mechanism for the organisation of social security beyond the national welfare state. It was organised as a cross-national mechanism *between closed national welfare systems*. It was designed to secure and maintain the closure of social citizenship, and the privileges of particular groups of migrant workers, in the face of their mobility.

For the purposes of this research, our focus on social security is the systems of cash benefits, funded through general taxation or social insurance contributions, and disbursed through the state as policy measures designed to protect individuals against social and economic burdens or distress (cf McKay and Rowlingson 2012). Social security was historically seen as protecting against labour market risks (being unemployed) and life course risks (being too old or too sick to work or not earning enough at particular phases of life, such as with children). However, feminist scholars have also shown that social security is also related to care risks, and indeed that all welfare systems rest on, and reproduce, presumptions about care and the gendered division of labour and gendered life course risks (Knijn and Kremer 1997, Lewis 2006, Bakker 2008:78-9). In addition, direct provision of social security for caring activities can both mitigate the social risks attached to the need for care, and also facilitate and support care provision. This can support care provision at home by individuals or through public provision (Jenson 1996, Leira and Saraceno 2002). Social security benefits provided in relation to care are often not tied directly to employment, although this varies by country and benefit type.

By default, our analysis of SSP regulation is concerned with formal social security rights presented in public policy. This excludes an analysis of private mechanisms and informal strategies of social protection. Such strategies are examined in later workpackages of TRANSWEL, befitting their particular importance to transnational migrants (e.g. Bilecen and Barglowski 2015). However an interest in how SSP regulations generate conditions that limit the acquisition and portability of social security rights (our research question 2), also requires an analysis that interprets portability regulations in practice. This interest in the *practice* of SSP regulations is also reflected in the methodology of the workpackage, summarised in section five. Besides unemployment benefits and

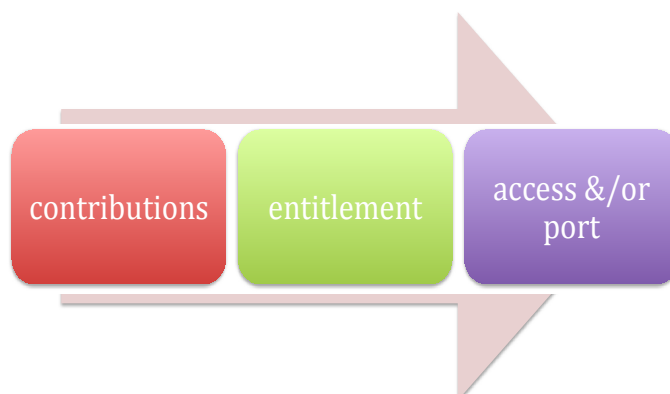
⁴ In this text, we refer to *social protection* as a broader category of public policy provision than *social security*. TRANSWEL analyses the portability of social security. Social protection is all those policies – cash benefits and in-kind support, including housing, healthcare and social care, as well as employment protections in the labour market – which comprise measures to protect individuals from life course and social risks, and to prevent indigence. We use *social security* to refer to (pre-dominantly but not only) contributory-based cash benefits (some of which also are used to secure care and healthcare). When it comes to the detail of our empirical analysis, such a simple distinction breaks down, as we discuss in section four. In general however, it enables us to distinguish between a more inclusive definition of all social policies (social protection) to those which we examine here.

pensions, our study includes healthcare benefits and family benefits (including those for care provision) as fundamental aspects of social security provision, and ones that have particular implications for understanding gendered experiences of SSP. Including healthcare and family benefits also enables us to explore how SSP is regulated in cases with a more tenuous or a more complex relationship to employment status.

There are a few definitions of portability of social rights from global studies of portability. These studies are dominated by research on pension portability, supplemented by interest in health insurance portability. Family benefits and unemployment are not addressed (see, e.g. Andrietti 2001, Holzmann and Koettl 2014, Taha et al. 2015). According to Taha et al (2015: 98) portability is 'the ability of migrant workers to preserve, maintain, and transfer benefits from a social security programme from one country to another and between localities in a country (spatial portability), between jobs'. For Andrietti (2001: 60) portability is the capacity of individuals to 'preserve the actuarially fair value of accrued rights while moving' to a different employer, different schemes or countries. Similarly, but more elaborately, portability is 'the ability to preserve, maintain, and transfer vested social security rights (or rights in the process of being vested), independent of profession, nationality, and country of residency' (Holzmann and Koettl 2014: 14) or 'the possibility of acquiring and keeping social benefits' entitlements and/or social rights in the event of mobility for work reasons' (d'Addio and Cavalleri 2014: 1). Additionally some authors distinguish between cross-national 'portability' and 'exportability' of social security entitlements (Taha et al 2015), where portability refers to the ability to move earned entitlements between schemes, and 'exportability' is the ability to move contributions to another scheme.

In figure one below, we present these standard conceptualisations of cross-national SSP regulation as a linear process, which moves from a migrant contributing to a scheme, which generates entitlements to benefits. The entitlements can then either be accessed (the pension is claimed) or they can be ported to another scheme (in another country). For example, someone may make pension contributions in a scheme in country A where they currently work. When they move to country B, they can aggregate these earned entitlements with any later contributions from country B (to be accessed at a later date, in either country), or with existing contributions from periods of work in country B or even a third country.

Figure 1. Standard conceptualisation of social security portability regulation as linear process



Source: authors' own elaboration

The portability of social security rights in the EU for EU citizens is highly regulated, in contrast to the portability of social security rights of non-EU nationals migrating into and within the EU. Avato et al

(2010: 458) categorise portability into four regimes, with intra-EU migrants classed within Regime I. This regime is defined as including ‘all legal migrants enjoying indiscriminate access to social services— in particular social security benefits—in their host country. In addition, home and host country have concluded a bilateral or multilateral social security arrangement guaranteeing that benefits are payable overseas (exportability of benefits), and also that the social security institutions of both countries jointly determine eligibility for and the level of the benefit’. What is being described in this case is the formal legal status of EU workers’ access to social security rights in other member states of the EU. In their analytical schema, regime I is the most favourable regime for migrant workers in terms of formal social protection for migrants portability of their rights. However, access *and* portability is often marked by selective benefit provision linked to several factors such as:

- **Migration history.** Portability of social rights is linked with professional trajectory and personal histories of migrations as they shape contributions and influence decision making, for example on early retirement (Jousten 2015)
- **Time and mobility.** Short term and long term stays imply very different relationships with formal social security regulation in the country of stay. Switching from one system to the other while migrating cannot take place without any financial losses.
- **Legal status.** The EU citizenship or ‘citizenship of the Union’ is a highly stratified status built around an exclusive ideal of the citizen as a paid worker or, more precisely, a paid worker who is a national of an EU Member State’ (Dwyer and Papadimitriou 2006: 1307, Carmel and Paul 2013).
- **Gendered socio-legal position and ties.** The gendering of labour markets and occupations in countries of origin and destination, the gendered division of labour in families, and migration regulations on family status, all shape the need for, and access to social protection, and for social security more specifically (Lutz 2011, Kofman 2013, Lutz and Amelina 2016)
- **Sector and occupation** Labour market conditions are one of the most important components of social protections for migrants. They are linked with the need for particular types of migrants and this need is apparent in the social entitlements provision.
- **Location** The political economy of migration, between countries with often highly unequal earnings, standards and costs of living, means that the relative significance of earnings, remittances, and social security payments matters materially, as migrants move from one country to another, and one place to another within countries.

In the light of such factors, the standard definition of portability of social benefits is problematic both conceptually and for migrants in practice. Misalignments can arise between formal legal requirements and the contextual conditions of migrants’ social protection. At the same time, these conditions can themselves be shaped by attempts to manage contrasting ‘domestically oriented social policy objectives and internationally oriented economic policy objectives’ (Holzmann and Koettl 2014: 34). Such contextual conditions may also be shaped by relations between receiving and sending countries, which can be highly politicized.

- migrants who are in demand (e.g. highly skilled) may access social security rights more easily than others
- low-paid migrant workers are less likely to access entitlements, especially if they are also in insecure employment or dependent self-employment⁵.

⁵ The distinction of dependent self-employment is where workers are formally (*de jure*) self-employed, but in all other respects undertake work in conditions which are the same as an employee. Self-employment usually grants access to fewer social and employment protections, and more costly social security than being an employee. Eurofound (2013) *Self-employed or not self-employed? Working conditions of ‘economically dependent workers’*. Background paper

In sum, existing studies of SSP are global in geographical scope, but narrow in policy focus on pensions and health insurance. These studies acknowledge SSP regulation in practice may be complicated by the practices and experiences of migrants. However, this is not investigated in detail, notably in relation to questions of gender, ethnicity or age, for example. These studies also identify the key importance of contributory conditions for benefit eligibility in shaping social security portability for migrants (for the EU, see Moriarty et al. 2016).

The studies have three key assumptions in common, which orient their investigations and our existing understandings of SSP regulation. First, that portability applies to social insurance-based benefits, through which entitlement to benefits are earned via contributions (which leads to 'vested' rights). A second, reinforcing, assumption is that the migration itself is work-related.

As we will see in section 3.1 below, and in contrast to these assumptions, European Union SSP regulation includes a number of non-contributory benefits. Migrants who are not workers (either in a sociological understanding of 'worker' or in the narrow EU legal definition of a 'worker') can access and port benefits. Third, national states are (often implicitly) conceptualised both as self-contained repositories of policies, contributions and benefits, and as mutually exclusive territorial containers within which migrants reside. Our 'transnational' lens of analysis (Amelina and Faist 2012) sensitises us to the methodologically nationalist assumptions in these studies. Both these assumptions are challenged in the case of the mobility of EU citizens (Favell 2008, Engbersen et al. 2013, Scheibelhofer 2016: 77-82)

Taken together, we can see that these three assumptions in existing studies are not tenable empirically, and that relations of employment, social security and migration need to be explicitly interrogated in any empirical analysis of SSP regulation.

Access to social security in national welfare systems is of course conditional for all (Clasen and Clegg 2007: 171-2) and (im)migrants' relationship to such conditions is highly stratified by legal status and social categories of identity and inequality, such as ethnicity, class, gender, age and sexuality (Sainsbury 2006, Sainsbury 2012). Furthermore, transnational migrants' mobile life trajectories weave together formal and informal strategies of social protection in complex ways, generating and re-working inequalities across local, national and transnational spaces (Faist 2014, Faist and Bilecen 2015, Scheibelhofer 2016: 76). Consequently, *portability* of social security rights is especially important for migrants as they face more risks and hazards related to accessing social security than other social groups. In the context of migration, portability of social security rights is understood as involving the protection of migrants' rights both spatially [while moving between two, or more countries] and temporally (securing rights over time).

The mutually dependant but unequal political economy of migration is also directly linked to the political economy of welfare in the European Union (Slavnic 2007, Likic-Brboric 2011, Carmel 2014, Meeus 2016). Migration can be used as a form of social protection by migrants, and used by national policymakers to sustain the organisation of welfare states, while migrants adopt transnational informal social protection strategies, from remittances to flying grandmothers. Centering our analysis around such transnational perspectives problematises conventional understandings of 'national' welfare systems and regimes for understanding social security of migrants (Amelina et al. 2016b) including our interpretation of what constitutes SSP regulation. Social protection is produced in field of tension between the transnational and national, between migrant practices and regulatory conditions. This observation requires some conceptual attention to issues of 'conditionality', membership, inclusion and exclusion, and the production of inequalities in social security regulation. It also raises questions about how they might be analysed. It is these matters that we now turn.

2.2 Interpreting inclusion and exclusion: from portability regulation to transnational portability governance

Social rights and entitlements act as barriers and entry points to social formations (“Austria”, “Bulgaria”, “Europe”). They selectively organize, valorise and exclude particular social groups, socio-economic characteristics and behaviours. The regulations which determine these social rights and entitlements simultaneously both generate, and try to reproduce, the normative and cultural characteristics of the inside (the included, or us) by reference to the exclusion of the unwanted and undesirable. They privilege some social/economic/political groups, and create hierarchies of conditional belonging and insidership (e.g. Morris 2002, Anderson 2013, Carmel and Paul 2013). This is organized through the regulation of social rights and entitlements, which designate who has legitimate entitlement, that is, who is included in the organisation and distribution of welfare (Crowley 2001). In addition, the regulation of social rights and entitlements also establish specific, legitimized conditional gateways to entitlements, which articulate and privilege particular normative assumptions (e.g. about male breadwinners, mothers of young children, promotion of full-time employment). Thus in case of the EU, such regulations, give meaning to what it means to be ‘European’ as a citizen or state (Maas 2007) even if this meaning is in practice contingent and contested.

In different contexts (e.g. different policy domains or different countries), the regulations creating such conditional gateways to formal membership or belonging may use a variety of mechanisms. The gateways are established through the mutual constitution of two dimensions of governance: the formal, or substantive dimension, in our case, goals of permitting or excluding the portability of social rights and entitlements; and the operational dimensions, which reflect how those goals are to be achieved (Carmel and Papadopoulos 2003). These dimensions are themselves underpinned and enabled by assumptions about inclusion and exclusion: selecting who meets which conditions, and how they are able to this to position and steer social subjects.

Like conditionality of social security more generally, assumptions of inclusion, exclusion and stratification in SSP regulation have their origins in multiple and overlapping framings of the public good. Most obviously, these framings concern welfare (what and who it is for in general); political economy (what our society and economy should be like and how do ‘migrants’ ‘fit’); nationhood (where the borders of our society lie and how are they defined); gender norms and family (what are the mutual duties of support between family, state, society and individual). This means that SSP regulation contains and reproduces, rationales of inclusion, exclusion and hierarchical ordering (stratification). Indeed, conditionality in public social provision has always had this key normative role, both determining, and determined by, how and for whom welfare and social rights are provided (Clasen and Clegg 2007). Such assumptions about, or rationales for, inclusion and exclusion are not necessarily coherent; indeed they are often in practice contradictory. Neither are they fixed, as they can be contested by the action of agents, especially by mobile people themselves, but also by other actors involved in regulation, such as bureaucratic decision-makers (Henman and Fenger 2006, Dwyer 2010, Wright 2016) or by jurisprudence and guidelines on implementation. It is in the mutual constitution of the two dimensions of governance, the formal and the operational, that the regulatory rationales for inclusion and exclusion are to be found.

Therefore, ‘portability regulation’ is not only a mechanism which channels money and rights between nationally bounded, a priori closed welfare states, offering selective openness to particular migrants (cf Ferrera 2005 and the excellent empirical application in), Blauburger and Heindlmaier (2016)). The conditions and practices of SSP regulation establish dynamic relations between mobility, residence, work and stratification that traverse two fields of tension: between EU-wide regulations, and the conditionality of national welfare states on the one hand, and between the

overall regulatory framework and migrants' transnational practices, on the other. These dynamic relations generate possibilities for inclusion and exclusion that migrants might negotiate, resist, avoid, or simply ignore. However, such possibilities cannot be 'read off' from either the formal regulatory framework in the EU, or its transposition in national welfare states. To identify such possibilities requires an analysis that explores the transnational conditionalities embedded in SSP regulation, that is, the form and content of regulations shaped *between* the migration sending and receiving countries, as well as multilaterally across the EU as a whole.

The interpretation of these dynamic relations and their implications for inclusion and exclusion also requires a 'migrant'-centred analysis that is oriented to the attributes and experiences that mark migrants' biographies and how these might intersect with both the formal regulatory framework, and practices 'on the ground'. In doing so, it also requires 'analytical contextualisation' (Carmel 1999, Carmel 2017 f/c) of the complex and intersecting circumstances within which such transnational conditionality of SSP regulation is practiced and with what implications. Our research questions demand a 'migrant-centred' analysis of the formal regulatory framework, the conditionality which is established in this framework and its implications for different (sociological) categories of migrant. This migrant-centred analysis is key to the design of the overall project design of TRANSWEL (Amelina 2014) and of this phase of research (section five below).

Our investigation for the first phase of TRANSWEL had these research questions: How are migrants' social security rights structured transnationally (in EU regulation, and between the migration sending and receiving countries) in regulations? How do welfare systems' conditionalities organize, condition, and set limits to the acquisition and portability of social security rights? Accordingly, the research was oriented around four aspects of inclusion/exclusion and hierarchical ordering which underpin SSP regulation transnationally.

- who is 'to be' included
- on what terms
- how this is achieved
- with what implications

First, who is 'to be' included. We approached this aspect by reference to 'categories of migrant' a rather crude heuristic device to enable us to move away from 'welfare system-centered' analysis of SSP regulation to one focused on migrants. Our findings give us a first reference point for understanding the regulatory conditions that diverse mobile citizens must negotiate, or try to avoid, in organizing their welfare/social provision transnationally.

Second, the terms on which mobile EU migrants are 'to be' included in the transnational EU domain and country-pair cases. In this aspect of our analysis, we want to look more closely at how different types of SSP regulation shape the formal limits and constraints of social rights portability. At the EU level, there are a number of ways in which cross-cutting legal framings and regulations might affect portability of social rights for different EU citizens. In section three of this working paper, we map both the formal goals of the different types of portability regulation and the sets of rights which these legally accord EU national migrants. In section four, we explain the ways in which this formal or legal attribution of rights gains is contingent on the diversities of welfare state provision in the EU and may generate diverse and unequal effects in practice.

Third, how are possibilities for inclusion and exclusion created – across cases and policy areas. We can identify the type of regulation or mechanisms through which dynamic relations between mobility, residence, work and stratification are established. For example, is it achieved through direct and specific regulations; or by complex or difficult procedural requirements. The second

aspect exploring how such dynamic relations take effect in SSP regulation is to investigate the ways in which they are produced by that field of tension between EU-wide regulations and those transnational regulations established between pairs of countries, and those national regulations, of the individual countries. This is addressed in section six of this paper and in section seven we explore variations by policy domain. This empirical analysis enables us to identify a more complex and dynamic conceptualization of SSP regulation, explained in section eight.

Fourth: with what implications for inclusion and exclusion are such relations of mobility, residence, work and stratification established? An analysis of the full implications of the regulatory conditions of portability is outside the scope of the research presented in this paper. It requires an exploration of whether such regulatory pathways matter at all for individual migrants' practices and experiences, and if so how. Among other aspects, later parts of the TRANSWEL project will enable us to explore these. Nonetheless, we impute the assumptions about, and possibilities for, inclusion, exclusion and stratification inscribed in the dynamics of SSP regulation in our transnational cases. In this paper, we do this by reference to: the differential and unequal entitlements secured by different categories of migrant; the socio-political context in which the regulations are produced; and diversity across policy areas. At its heart, this analysis concerned with the rationales that underpin the regulations, especially the conditions that govern and hierarchically order access to social rights for different mobile people in different countries of the EU.

III The formal framework of portability regulation in the EU⁶

In this section of the working paper, we provide an overview of key aspects of the formal EU regulatory framework affecting SSP in the Union.

3.1 EU legal regulation

It presents both the main legislation, their purposes and main points, as well as significant relevant case law. In doing so, the overview also draws attention to the areas of contention, ambiguity and complexity in the regulations. It is organised as follows:

- Primary EU law (Treaty-based provisions)
- Secondary legislation (law developed from Treaty provisions)
 - Directives (in-principle, legal specifications of minimum requirements, to be transposed into national legislation) & key associated case law
 - Regulations (highly specified legal requirements, which must be incorporated into national legislation) & key associated case law
- Additional relevant case law

3.1.1 Treaty-based provisions

Free movement

- Article 21 'Every citizen of the Union shall have the right to move and reside freely within the territory of the member states, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.'
- Articles 21(1) and (3) allow "the legislature to set the conditions for movement and residence and measures of social protection which secure this end." (Chalmers, 2014).
- Article 20(2) the right to free movement and residence for EU citizens can be restricted by secondary legislation

Chalmers, (2014:6) maintains that the Treaties are especially circumspect when it comes to the articles on citizenship. In particular, he maintains that "...unlike other Treaty principles, the right of EU citizens to come and reside within another Member State does not constrain EU legislation but is rather subject to the limits and conditions set down by such legislation."

Non-discrimination

- Article 45(2) prohibits discrimination against workers from other member states in 'employment, remuneration and other conditions of work and employment.'
- Article 18 prohibits discrimination on grounds of nationality, but there are strong limitations to this prohibition.

⁶ This section is set out primarily as a descriptive list of key regulations, and the key case law which have qualified or elaborated on their implementation. We have included those which especially seem relevant to our cases and are reflected in our comparative data.

3.1.2 Directives

Directive 2004/38 on the right of citizens of the Union and their family member to reside freely within the territory of the Member States. OJ 2004, L158/77.

Key message: EU citizens who are employed, self-employed, self-sufficient or who are a family member of an EU citizen who is, are entitled to equal treatment to nationals.

Article 7(1)(a) – Residence above 3 months is available to all EU citizen workers or self-employed in a second member state

Article 7(1)(b) - Residence above 3 months is available to all citizens (economically active and inactive EU citizens and their family members) who can show they are not an ‘unreasonable burden’ on the social assistance system of MS of residence, and that they have comprehensive health insurance.

Article 7(3)(c) – even a brief working period, including on short contracts (less than 12 months), if followed by unemployment, should enable an EU worker⁷, if they are registered unemployed, to have a right of residence no less than six months.

Article 24(2) - Social assistance does not have to be provided to workers in first 3 months.

Case of Brey, C-140/12, judgement September 2013: that imposition of a period of residence by member state before an EU citizen acquires rights to benefit is not unlawful discriminatory treatment. However, social assistance should be paid to workers after the first 3 months where it does not present an unreasonable burden on the state (duration of residence, personal circumstances, the amount of money and temporary nature of difficulties can be taken into account). This is partly contradicted by the case of Alimanovic, C-67/14, judgement, September 2015. This judgement considered that the right of equal treatment under the Citizen’s Directive is subordinate to ‘lawful residence’, a status which may depend on not having recourse to public funds (ie social assistance): one can, following this judgement, have a right of residence in another member state without access to minimum social benefits in that state.

Case C-46/12: that if your work does not pay you enough to live on, as an EU citizen you must also receive social assistance. This creates the ironic situation for EU citizen migrants, that if you are not a worker, you must be economically self-sufficient, but there is no such requirement if you are a worker.

The interaction of Directive 2004/38, with Treaty rights to non-discrimination with nationals, and with Regulation 883/2004 on social security co-ordination (below) continues to cause difficulties and referrals to the CJEU. The issue raises contention among member states about the right to reside: if an inactive person (a pensioner say) does not have comprehensive sickness insurance (as per 2004/38), do they qualify for residence because, through the Regulation, they can access healthcare and social security? Legally speaking, it is a question of which legislation takes priority between the regulation and the Directive (see Jorens et al. 2013, O'Brien et al. 2014). These cases matter for the study of portability, because they directly affect

- a) what legal protections a mobile person might be able to invoke to secure their social rights while residing in another member state, and
- b) what that person might have to provide or show to a decision-maker in order to prove their right of residence and entitlements.

⁷ See below, 3.1.4 and especially 3.2, for discussion of how definitions of ‘worker’ and ‘work’ matter in law and policy across the Union.

Of these, for our empirical analysis, with its emphasis on the migrant-centred perspective, b) is most important, although not specified in EU regulation.

Directive 2011/24/EU on the application of patients' rights in cross-border healthcare

Key message Enables patients to secure treatment in another MS and have that treatment reimbursed by their home MS. Full implementation of this Directive was only required by end of 2014.

MS are required to establish lists of treatments which require prior authorisation, and those which do not. The former would normally be more significant treatments, involving overnight stays in hospital. MS are also required to establish 'National Contact Points' for citizens to find information on conditions, limits and possibilities of seeking medical treatment abroad. This directive is potentially significant for mobile EU citizens: especially those who move between countries more frequently, and those who might prefer to seek medical treatment in their country of origin.

However, recent evaluations (Pennings 2011, Jorens et al. 2013: 30, Commission of the European Communities 2015) point to significant areas of overlap and confusion in the application of 883/2004 on sickness and health insurance, and the rights established through 2011/24/EU. The Commission's evaluation report notes that there is minimal awareness among the general population, confusion among decision-makers, and lack of legal clarity regarding the respective application of the Directive and 883/2004.

3.1.3 Regulations

Regulation 883/2004 on the Co-ordination of Social security systems Regulation 987/2009, Implementing regulation 883/2004

Key message: these Regulations, with their annexes, form the centre-point of governance of social rights portability in the EU. Of central importance is the emphasis on 'co-ordination', rather than 'harmonisation'. The development of policies for social protection remains a competence of member states of the Union, rather than of the Union as a whole. Thus, these Regulations set out procedures and rules for how the institutionally, legally and politically independent social security regulations of member states should be co-ordinated, to prevent barriers to free movement (Employment Social Policy Health and Consumer Affairs Council 2003, Regulation 883/2004, preamble (32)) and while "contributing towards improving [EU workers'] standard of living and conditions of employment" (Regulation 883/2004, preamble (1)). This means that 883/2004 establishes a specific set of conditions and rights whereby a) contributions or other qualifications for social security earned in one member can be recognised in another, and b) responsibility for payment of benefits is assigned between member state welfare systems.

However, an ambivalent relationship with residence was directly established within the Regulation. 'Residence' is defined according to EU law, as "the place where a person habitually resides" (Regulation 883/2004, Art. 1(j)). The Regulation establishes a general principle that benefits shall not be reduced, or adjusted "on account of the fact" that a social security beneficiary *or their family members* reside in another member state (Art. 7). Thus the place of residence should not define the ability of social security beneficiaries to access their entitlements (ie wherever they live), although this is subject to very specific time limits in the case of unemployment benefits (Art. 63).

Consequently a contradictory position is embedded in the Regulation. On the one hand, EU citizens' social security rights are not to be dependent on residence within a specific member state. Yet at

the same time, social security itself is conceptualised as fully ‘bounded’ in the specific national welfare systems of member states, with their embedded rules and norms. The Regulations require the determination of the – single - ‘competent’ member state; this in turn, requires the determination of “(habitual) residence” in only one member state (see especially 987/2009, Art. 11). This ambivalence between fully deterritorialised (or Europeanised) social security rights, and national member state ‘belonging’ through habitual residence, is explicitly expressed in the preamble to the Regulation, which goes further even than habitual residence, noting the existence of ‘special benefits’ which are too nationally-embedded to be portable:

“Within the Community there is in principle no justification for making social security rights dependent on the place of residence of the person concerned; nevertheless in specific cases, in particular as regards special benefits linked to the economic and social context of the person involved, the place of residence could be taken into account”

(Regulation 883/2004, preamble (16)).

In addition, for mobile EU citizens and workers, these conditions and rights are contingent on the relationship with a number of other elements of the formal legislative framework. As a result, these Regulations are situated at the centre of a matrix or web of Directives, Regulations and case law based on a highly problematic underlying political and legal structure. As de Witte (2013: 593) argues, the process of EU integration “deliberately insulated the free movement provisions from political interference by their transnational codification, while the social question remained on the national level.”

The complexity of these interacting EU regulations and Directives is recognised as a problem in numerous analyses (Blauberger and Schmidt 2014, Pennings 2014, Moriarty et al. 2016) but the focus in these studies is generally on the formal legal or regulatory complexity (but see Blauberger and Heindlmaier 2016), rather than the implications for practice and migrants’ experiences.

The *Dano case*, C-133/13, judgement in November 2014, found that for economically ‘inactive’ EU citizens residing in second member state, restrictions on their access to social assistance in the 2004 Citizen’s Directive should be prioritised over any less restrictive view of entitlement in the 883/2004 regulation on portability of social security.

Regulation 492/11 on the free movement of workers

Key message: This regulation establishes that a worker, self-employed person and self-sufficient person are granted rights of residence for more than three months in another MS. Anyone not in these categories can be refused right of residence. (*Alokpa*, EU: C: 2013: 645, para 31)

Those covered by the Regulation ‘shall enjoy the same social and tax advantages as national workers’ (art 7(2)); are granted access to housing benefits (art 9) and education for their children on the same terms as nationals (art 10). Child benefit is considered to be covered by art 7(2) (Non-payment to children abroad can constitute indirect discrimination as non-nationals are more likely to have children who reside abroad.)

The concept of the ‘employed’ also covers unemployed EU migrants, given a ‘reasonable’ time to find work (called ‘retained worker’). Six months is reasonable (*Antonissen C-2092/89*), especially if the previous employment in the current member state was for less than one year (*Alimanovic C-67/14*). They may be able stay for longer, but the onus should be on the individual to prove that they have a ‘genuine chance of being engaged’. If previously employed in the member state for longer than 12 months, restrictions on length of stay (and thus rights to equal treatment in social

benefits) are generally not considered permissible. Other case law also provides that workers who become unemployed while on maternity or parental leave will keep their 'retained worker' status until after the end of their maternity/parental leave.

3.1.4 Key case law definitions

On the definition of residence:

The definition of residence as the place where a person 'habitually resides' is dependent on a definition of 'habitual residence' which applies across all EU law (thus including, but not confined to, Regulations 883/2004 and 987/2009). Habitual residence was defined by the CJEU as "the State in which the persons concerned habitually reside and where the habitual centre of their interests is to be found.....account should be taken in particular of the employed person's family situation; the reasons which have led him [sic] to move; the length and continuity of his residence; the fact (where this is the case) that he is in stable employment; and his intention as it appears from all the circumstances" (Case *Swaddling* [1999] ECR I-1075, paragraph 29, C-90/97).

The criteria for establishing habitual residence are general, and not complete: they "may include" (Regulation 987/2009, Art. 11):

- family situation (family status and family ties);
- duration and continuity of presence in the Member State concerned;
- employment situation (nature and specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of the work contract);
- exercise of a non-remunerated activity;
- in the case of students, the source of their income;
- housing situation, in particular how permanent it is;
- the Member State in which the person is deemed to reside for taxation purposes;
- reasons for the move;
- the intention as it appears from all the circumstances .

The criteria are not hierarchically related, but some criteria may be considered more important than others, depending on the beneficiaries' personal circumstances. Furthermore, national criteria of residence can be applied to the determination of which member state is responsible for a benefit, as long as these criteria do not fall foul of the non-discrimination requirements of the Treaty and the Citizens' Directive (see 3.1.1 above) (Administrative Commission for the Coordination of Social Security Systems 2013: 44-5).

On the definition of work:

The definition of what counts as 'work' is important because proving this status as a worker is vital as it grants access to rights of residence, access to benefits and portability as a 'free moving worker'. Furthermore, having employment is also used in Habitual Residency tests to ascertain the 'centre of life' of migrants.

The question of what counts as work (and therefore who counts as a worker) has been left to MS, but CJEU case law shows that it can be rather minimal – a few hours work per week, and financially not necessarily enough to live on (or to enable someone to live without recourse to social assistance). The legal definition of work for the purposes of assessing whether an EU citizen is 'in work' and therefore a worker, is whether the work is more than 'marginal and ancillary' (*Case Genc v Land Berlin*, C-14/09). However, as we will see in section 3.2, below, a number of member states have been adjusting their national definitions of 'work' as they apply to criteria for benefit

entitlement. Table 1 below (p.21) maps the key relevant legislation and rulings which affect portability and the access of mobile citizens' access to social rights. This map is a heuristic overview of the ways in which the regulatory framework agreed at the level of the EU impact on different types of benefit examined in our study. It is not intended to act as a source for all legal cases that might raise questions of social security and free movement.

Overall, this rather cursory overview indicates that the presentation of principles of free movement of workers, and of social security co-ordination in EU regulations is not. We are left with a bundle of laws and regulations, but without a clear sense of what this might mean for migrants themselves as they face different circumstances. Understanding what the regulations mean for migrants is central to the analysis of the dynamic relations between mobility, residence, work and stratification, and the next sub-section summarises the formal positioning of EU national migrants by these legal provisions, before the paper examines how these principles unfold in relation to national provision of different benefits and the interpretation of these in practice.

3.2 EU migrants' formal rights to social security and portability

The first clarification to make is that our analysis is organised around the general regulation of rights to SSP for intra-EU 'economically active' migrants (excepting 'posted workers' and some other categories cited below). However, there are particular categories of intra-EU migrant such as 'economically inactive' migrants (students, pensioners), who are also subject to other rights and regulations. This working paper does not examine regulations for these categories of migrant except those that also apply to the economically active according to their more general legal status as EU nationals. Legal categories excluded from our analysis include:

- a) Sole-trader, who has their own business based in one country, but does business offering services in another: here the migrant is a service provider who moves under the right to provide services, rather than the right to free movement. To be considered a migrant, the person must live a number of days per month in the second country.
- b) Migrant working for an employer who is sent to another country to undertake a specific work-task or job, which their employer has been contracted for: here the migrant is a posted worker, and subject to Regulations on posted workers.
- c) Migrant who lives in one country and is employed in another: here the migrant is a 'cross-border worker'. There are no specific Regulations or Directives affecting EU cross-border workers, and they are considered as EU workers, but Regulation 883/2004 gives specific consideration to their situation in a number of its articles. There is CJEU jurisprudence which regulates the tax position of cross-border workers.

Finally, there is also the important distinction within national social security regulations, between categories of employee. As we are concerned with general SSP regulations, rather than distinctions between occupational groups (which might have different pension schemes, for example), the most salient distinctions are between the formally employed, informally employed and self-employed. The distinction between the formally and informally employed is at the heart of the TRANSWEL project, and is highly relevant for later work. Taking account of employment status (who counts as a worker) and contributions from employment (do all workers make contributions) in interpreting the implications of SSP regulations is a significant part of our analysis. We excluded the self-employed from our analysis. In all our country cases, the self-employed are subject to special regulations regarding social security contributions – and tax. While in general we expect there to be higher proportions of self-employed among migrants, for the regulatory analysis this would have in effect doubled the range of the empirical analysis.

Table 1: Key relevant sources of legal regulation in the European Union affecting portability and access to social rights for mobile EU citizens^{8,9}

Benefit type	Treaty articles	Directives	Regulations	ECJ cases
Unemployment				
Unemployment insurance	- 18 (<i>non-discrim by nationality</i>) - 45(2) (<i>non-discrim of workers</i>)	- 2004/38 (<i>rights of residence and equal treatment of workers and dependants</i>)	- 883/2004 & 987/2009 (<i>SSco</i>) - 492/11 (<i>FM of workers</i>)	Genc v Land Berlin, C-14/09 (<i>definition of work</i>); Antonissen C-2092/89 (<i>time to seek employment</i>)
Unemployment assistance	- 18 - 45(2)	- 2004/38 (<i>workers, if scheme is social insurance; Articles. 7(1)(b), 7(3)(c), 24(2) on access if scheme is social assistance</i>)	- 883/2004 & 987/2009 (<i>contributory & statutory schemes, or if SNC-CB</i>) - 492/11	Brey, C-140/12 (<i>where UA is social assistance</i>); Genc v Land Berlin, C-14/09 (<i>definition of work</i>); Antonissen C-2092/89 (<i>time to seek employment</i>); Case C-46/12: (<i>right to support for income if wages too low; relevant for SA schemes</i>); Dano C-133/13; Alimanovic C-67/14
Family				
Maternity paternity	18 - 45(2) (<i>contributory schemes</i>)	- 2004/38	- 883/2004 & 987/2009 - 492/11	Genc v Land Berlin, C-14/09;
Parental leave	- 18, - 45(2)	- 2004/38	- 883/2004 & 987/2009 - 492/11	Genc v Land Berlin, C-14/09
Child-raising allowance	- 18	- 2004/38	- 492/11, art. 7(2) (<i>workers & dependants</i>)	Hartmann, C-12/05
Child benefit	- 18	- 2004/38	- 492/11, art 7(2) (<i>workers & dependants</i>)	
Health				
Sickness insurance	- 18 - 45(2)	- 2004/38	- 883/2004 & 987/2009 - 492/11	Genc v Land Berlin, C-14/09
Health insurance and healthcare cover	- 18 - 45(2) (<i>for workers</i>)	- EHIC - 2004/38, art. 7(1)(b) (<i>requiring cover for resident non-workers</i>) - 2011/24/EU	- 883/2004 & 987/2009 (<i>for workers</i>) - 492/11 (<i>for workers</i>)	Genc v Land Berlin, C-14/09 (<i>for workers</i>); Alokpa, EU: C: 2013: 645 (<i>limit on rights of residence if not self-sufficient or worker</i>)
Pensions				
Basic (1st pillar pension)	18, 45(2)	- 2004/38	- 883/2004 & 987/2009 (<i>contributory</i>)	Genc v Land Berlin, C-14/09 (<i>contributory schemes</i>)
2nd pillar public pension	45(2)	- 2004/38	- 883/2004 & 987/2009 (<i>statutory</i>) - 492/11	

⁸ Own compilation from EU documentation, with reference to Shaw et al, 2014; Chalmers, 2014. SNC-CB means Special non-contributory cash benefit in Reg 883/2004.

⁹ Italics indicates that this item may not apply without exception to all mobile citizens claiming or seeking to claim, a particular benefit. ALL EU mobile citizens staying or residing in another EU member state are subject to Art. 21 of the Treaty, on Free Movement. For that reason, this important article is not referred to here.

So what do these free movement and social security rights formally regulate?

Moving to another member state

An EU national who moves to another EU country to live is exercising their rights to move to, and reside in, that second country as an EU citizen. EU citizens who have been living in another member state for less than five years must be “self-sufficient” and have comprehensive health insurance. For the first five years, they may not be “an unreasonable burden” on the welfare system of their country of residence. What counts as an unreasonable burden is defined by each individual country, but usually limits the extent to which EU citizens have “recourse to public funds”.

This means that incoming EU citizens do not have a *right* to receive social support in their new country of residence on the grounds of financial need. As a result, social assistance benefits are not automatically accessible to all EU citizens until they have been in the country for five years. In practice, though, the entitlements for EU citizens hinges on their employment status and under certain conditions.

Working in another member state

A migrant who moves to another EU country and takes up “genuine and effective” employment is considered to be a **worker**. Workers, who can either be employed or self-employed, are formally entitled to move and live in another EU member state without restriction. They are also entitled to equal treatment with nationals in employment and access to social benefits after the first three months. As long as the EU worker has worked at least one day in the country of destination, they can export any social insurance contributions (public pension, statutory health insurance, unemployment insurance) they have made in their previous country/countries of residence to be added to any contributions to social security they make in their country of destination. In the case of pensions, if the contributions are for less than 12 months in any member state, these contributions are treated as if they were made in the country where most pension contributions were made. Most importantly however, is that the key to these rights is what counts as “genuine and effective work” is defined by member states, and a number of member states have introduced domestic legislation to tighten its definition (O'Brien et al. 2016). This has the result of stratifying the relations of mobility, work and residence by class, as well as by gender, due to occupational segregation and inequalities in the labour market (O'Brien 2013: 1646, 2016). (See section 4 below.)

Losing a job in that member state

If a migrant who moves to another member state is employed for a while and then becomes unemployed, they are either classified as a “**jobseeker**” or as a “**retained worker**”. A retained worker must have been employed for at least six months in genuine and effective work. They keep the legal status of worker and are entitled to the same social security and residence rights as nationals, under the non-discrimination requirements of the Treaty and Citizenship Directive 2004/38. Member states establish different lengths of time when a person can keep this intermediary status. After the six month period, a retained worker must have a “genuine chance of being engaged” to keep that status. If the worker was previously employed for more than 12 months, jurisprudence suggests that the status of ‘retained worker’ can be kept indefinitely.

Looking for work in another member state

Legally, there are two kinds of “jobseeker”. First, someone who has been employed, but for less than six months, or in work which is not considered “genuine and effective”. And second, a migrant who moves to another EU country to look for a job: they have a right to stay and look for work for six months. If such job-seekers have registered unemployed for at least four weeks before seeking employment in another member state, they can also choose to export any benefit from their former state of residence, to be paid by the country of destination (and reimbursed by the country of origin). The economic value of the benefit and standard of living in each country can radically affect

the monetary value of this portability right (e.g. Estonian unemployment benefit is of very low value relative to costs of living in Sweden).

After the first three months of living in a country, EU migrants classified as “jobseekers” have some entitlement to those benefits that are designed to support the search for employment (usually unemployment assistance benefit) in the country of destination. They do not have a right to general social assistance. Case law and the right of residence under Directive 2004/38 cited in section 3.1 above means that their access to such benefits can be limited to three months. To access such benefits, “jobseekers” must also show a close link with the domestic labour market, and be ‘habitually resident’, with their ‘centre of life’ in the country of destination.

Route to permanent residency in another member state

An EU citizen who lives in a second member state for five years or more, with no absences for longer than three months, is a permanent resident. This status applies automatically and there is no requirement to apply to be a permanent resident. It confers special protections against deportation and generates rights to have “recourse to public funds”, irrespective of employment status. If an EU citizen is self-sufficient and meets national residency requirements, there are no formal limits on how long they can live in another member state. But it is possible to lose this right to reside, notably, if the migrant is “an unreasonable burden” on the host state. If an EU citizen loses this right to reside, they can be deported; although the criteria for deportation are high – such as very high threats to public health or the public good – and difficult to enforce.

3.3 Summary

EU law and regulations that affect social security portability for intra-EU migrants are complex, have overlapping definitions, and terms which can be difficult to interpret. Most importantly, they contain within them contradictory principles of mobility (social security rights should follow the individual) and sedentarism (the individual must ‘belong’ to one member state, by employment or residence). Variation in the significance of regulations will depend on changes in jurisprudence, the policy area (unemployment, family benefits, pensions, healthcare and pensions), type of benefit (contributory, non-contributory), specific member state regulations and their interaction between countries of migration and return, as well as the circumstances and life history of the migrant. To investigate the implications of SSP regulations and conditions in practice, we need to examine in more detail the transnational political, institutional and socio-economic contexts within which these regulations are applied. These issues are addressed in section four.

IV Complex empirical contexts of EU portability governance

4.1 Historical context and the EU framework

The complexity of the EU framework is not merely produced by its definitions or legal contradictions. It is also produced by its implicit assumptions – political, ideological and historical. The assumption in the existing literature is that portability regulations apply to standard, contributions-based social insurance schemes (such as pensions), and to worker-migrants. These assumptions – about work, the EU-worker citizen, and about social protection – are embedded in the origins of EU social security co-ordination regulations and have also affected adjustments and amendments to regulations since then. This sub-section attends to the historicity of SSP regulation and its importance for interpreting its implications.

The Social Security Co-ordination Regulations were first established at the zenith of ‘Fordist’ production models of manufacturing and industry in several of the (only) six member states in Regulation 1408/71. These six member states were marked by Bismarckian or ‘conservative-corporatist’ welfare regimes (Esping-Andersen 1990, Bonoli 1997) and an emphasis on supporting the male breadwinner, common to most postwar Western European welfare states (Lewis 1992) and securing standards of living across the life-course with some, relatively limited, re-distribution among income groups. Regulation 1408/71 was originally designed to protect male industrial migrant workers, in full-time, skilled, regular employment. It would secure their social rights especially in pensions and health-care, in the aftermath of expansionary reforms to pension systems, as these workers moved from one ‘Bismarckian’ or ‘conservative-corporatist’ welfare state to another, at broadly similar levels of income. This description highlights the historical specificity of the context within which the original social security co-ordination Regulation was adopted and alerts us to the radical transformation of the social and economic context of social security provision which apply in contemporary member states.

Questions of coherence between member state social security regulations and the terms of 1408/71, not to mention the unwieldy weight of numerous reforms to 1408/71 over the years, lead to attempts to develop a new Regulation. Eventually 883/2004, and its implementing Regulation 987/2009 were agreed, including in their aims, the accommodation of maternity and parental leave and to regulate some special non-contributory benefits in an expansionary vision of modernizing legislation in accordance with the emergence of EU citizenship as a fundamental legal status. This latter status was introduced with the Maastricht Treaty, and specified in Directive 2004/38, the so-called Citizen’s Directive. The new Regulation and the Directive were introduced at the same time, building on a wave of optimism from the late 1990s about the future of the Union and its role in generating social rights (Daly 2012, Carmel and Papadopoulos 2016).

However, as we saw above, the applicable legislation is both complicated and overlapping. CJEU rulings, based on individual cases, can have results that are difficult to interpret in national systems. O’Brien (2013: 1643) argues that the result is that “rights do not attach to personhood; rather rights are triggered, interpreted, delineated and weighed according to a miscellany of conditions”. This miscellany creates gaps which accommodate narrow and economic constraints on the legal specification of EU citizenship and in which member states can (re)nationalize the legal category of EU citizen to suit their political preferences and contexts (Shaw 2015). The ‘in principle’ characteristic of Directives, combined with specificity of portability regulation compounds the complexity of portability governance for EU citizens and workers. Even if clearly designated the ‘competent’ MS, countries may set additional requirements around residency or attachment to the labour market. These conditions may derive either from other EU legislation (eg 6 month limits on

job search from Directive 2004/38 and case law) or from national interpretations of these (affecting ‘right to reside’) or from national conditions which apply to particular benefits. The preference for “political truth” and the demands of member state politics favoured by member states, rather than EU-wide jurisprudential coherence (Shaw 2015) has also affected CJEU jurisprudence over time, from an earlier expansionary to a latterly more restrictive view on EU migrants’ rights (Kostakopoulou 2001, O'Brien 2016). EU jurisprudence on SSP regulation is thus dynamic and contingent. Insofar as it acts as a ‘framework’ for how member states regulate access and portability to social security, it does so on shifting terrain rather than on solid foundations.

We should consider the date of these key pieces of secondary legislation as analytically relevant. They were agreed only a few years after the introduction of European Monetary Union, before the momentous 2004 accessions, and have also witnessed significant welfare state and labour market reforms in many member states even before the 2008 financial crisis. In order to investigate how the portability of migrants’ social security rights are structured transnationally, between the migration sending and receiving countries, and to explore how regulatory conditions organize, condition, and set limits to the acquisition and portability of social security rights, we should attend to these contexts in more detail.

4.2 Changing institutional and socio-political contexts

4.2.1 Political economy of accessions

Notwithstanding the adjustments in CJEU jurisprudence, the 2004 Regulations and Directives necessarily also carry with them traces of earlier assumptions about what welfare states are and do, and for whom they do it. A key context for interpreting this is the institutional effects of 2004 and 2007 accessions on both policymaking and applicability of regulations, directly introducing significantly more diversity and complexity to the regulation of SSP.

In particular, they carry with them assumptions about the political economy of welfare and of labour markets in the EU, notably, a broad socio-economic equality among member states. This might have been plausible among the six member states that originally developed social security co-ordination; less so following the Southern (1980s) and Northern (1990s) accessions. They certainly cannot be said to hold true since 2004 (Menz 2009, Carmel 2014). Such inequalities have been shaken up, but not ameliorated, since 2008 – rather the reverse. These inequalities were partially managed by efforts to exclude EU8 migrants from free movement and its attendant rights, for up to 9 years after accession.¹⁰ Directly shaped by the unprecedented inequalities in GDP per capita and living standards between the EU8 and EU15 (Guillen and Palier 2004) arguments of ‘welfare chauvinism’ were marshaled as rationales for the temporary exclusion of EU8 citizens from these rights (Kvist 2004).

Just at the moment – 2004 - when free movement rights and SSP were extended legally, routes to access such rights were being closed off by political measures to exclude mobile citizens from the economically poorest states of the EU. Furthermore, as we have found, shortly after the end of these political transitional measures for the EU8 (in 2013/4), and subsequent to the economic collapse of two of the EU15, Spain and Greece, CJEU jurisprudence to close off access to social security (although not portability per se) emerged.

The economic inequalities between more recently acceded member states and the wealthier countries of the EU15, are perceived to generate high incentives to move and work. Indeed, from a

¹⁰ The UK and Sweden from our TRANSWEL cases (plus the Republic of Ireland) did not impose controls in 2004; Of the EU15, only Sweden did not impose controls in 2007; Hungary also imposed controls for some occupations in 2007.

Union-wide perspective, labour mobility is promoted as a boost to the ‘European’ economy, and as a means to sustain welfare states by providing staff (Hansen and Hager 2010, Recchi 2015). In the mid-2000s, this was reflected in strategies of labour recruitment among wealthier Western/Northern member states. However, this recruitment was imagined selectively ‘filling labour market gaps’, with underpinning utilitarian expectations about trade-offs regarding costs and benefits of intra-EU migration, against wider ethnic and post-colonial framings and assumptions (covering a number of our TRANSWEL countries, cf: Menz 2009, Paul 2013, 2015). In addition, portability also implies the export of social security from richer countries to ones with lower standards of living and lower (sometimes much lower) average earnings, and this has during the 2010s coloured expectations of mobility, strategies of closure, and political discourses of exclusion in some, but not all, member states (Bruzelius et al. 2014).

The political economy of recent accessions contextualizes SSP governance and enables us to observe that free movement and social security ‘rights’ appear politically contingent, even as the portability regulations of 2004 expanded some entitlements, for example to family benefits, parental leave.

4.2.2 Welfare system diversity and reform

The accessions of 2004 and 2007 not only radically altered the political economy of the EU, they also increased the diversity in political economy of welfare. Insofar as SSP regulation depends on the similarity of welfare systems, and presumptions of contributory-based benefits, the increased diversity of welfare systems in the EU has made SSP regulation more complex. There are three aspects to this complexity. First, the number of different welfare systems in the EU has radically expanded in the last two decades. This range of welfare systems increases the diversity of norms, definitions and organisational structures that must be accommodated in transnational SSP regulation. Second, this diversity is compounded by the characteristics of welfare reforms of the last 10-20 years, which have marked a number of benefits with increasing conditionality (especially unemployment-related benefits), higher contributions, and greater use of private provision or marketised organisation of provision, such as consumer selection of health insurance provider (Morel et al. 2012, Van Kersbergen and Hemerijck 2012). The third aspect concerns the diversity of arrangements in specific policy areas, some, but not all of which is directly affected by these reforms (Ferragina et al. 2015); we address this issue in section 4.2.3 below.

Table 4.1 below provides a very crude summary of key differences among our eight countries in terms of the global structure of social expenditure as % of GDP. We can observe that the relative weight of expenditure is variable within countries, with a strong orientation of expenditure on families in the UK and Sweden, and relative higher proportionate expenditure on pensions in Germany (which has a large ageing population) and Poland (which does not). The strongest contrast in overall expenditure between our country cases is between Estonia and Sweden – which reflects the literature emphasising the especially residual and neo-liberal characteristics of social protection in Estonia and other Baltic states. Overall levels of expenditure in the EU8 is lower than in our EU15 countries, although these differences are more marked in health and pensions (except between Estonia and Sweden) than in family benefits (except between Poland and the UK) or unemployment benefits.

This table, however, does not indicate the institutional structures which shape this diversity of expenditure, and the comparability of this data should be treated with caution, as it does not indicate levels of expenditure (i.e. 10.6% of German GDP is considerably more in monetary terms than 10.8% of Polish GDP). For a more nuanced picture of the welfare systems of the TRANSWEL countries, we need to consider their institutional structures, and, importantly for our interest in SSP regulation, the general mechanisms (ie for non-migrants) used for securing eligibility and access to social security, which then affect portability for migrants.

Table 4.1: Share of total public spending as a % of GDP, by country and policy area, 2013

	Unemployment	Family benefits	Health	Pensions	Total¹
Bulgaria	0.5	1.8	4.4	7.6	17.0
Germany	1.1	3.1	9.5	9.0	27.7
Hungary	0.5	2.5	4.9	9.6	20.6
Austria	1.6	2.8	7.3	12.8	28.9
Estonia	0.5	1.6	4.1	6.5	14.6
Sweden	1.2	3.1	7.5	12.4	29.4
Poland²	0.3	0.8	4.1	8.5	17.2
UK	0.6	3.0	8.5	11.8	27.8

Source: Eurostat.

Notes: 1. Includes all public social expenditure (including housing, income support and others). 2. Data for Poland from 2012.

Table 4.2 below summarises the key characteristics of the ‘types’ of welfare system that might generally be applied to the eight country-cases of TRANSWEL. At the level of ‘regime’, our eight cases fall into four of the generally recognised ‘worlds of welfare’ or families of welfare system. Despite their diversity, all four of our EU8 countries are in general terms classified as a reflecting a single type of ‘post-communist’ welfare.

In terms of contributions and the generation of entitlement to social security (the first step in the classic conceptualisation of SSP regulation, we saw in figure one, above), we can broadly distinguish “Bismarckian” from “Beveridgean” mechanisms for accessing social benefits and services. The “Bismarckian” mechanisms align closely with the assumptions of SSP regulation in the literature and the origins of the EU’s social security co-ordination. Eligibility to benefits is secured by contributions made through employment; other eligibility is derived from these contributions (e.g. dependant family members in the ‘male breadwinner model’). In contrast, “Beveridgean” mechanisms secure eligibility by residence and/or need so that the relationship with employment contributions and access to benefits is more tenuous. The distinction between Bismarckian and Beveridgean welfare system features in the overall design of TRANSWEL, with two Bismarckian ‘destination’ countries, Austria and Germany, and two Beveridgean, Sweden and the UK. However, given our focus on comparing portability across four policy areas of unemployment, family benefits, health and pensions, the diversity of mechanisms to secure eligibility within one ‘model’ or type of welfare system is striking.

Table 4.2: Summary of key characteristics of welfare system types explored in TRANSWEL

Model (TRANSWEL example)	Key characteristics
Conservative-corporatist (Germany, Austria)	Contributory-based benefits and services; dependant on employment and occupations; emphasis on maintaining income at vulnerable times (old age, unemployment); supplementary needs-based tax-funded provision; emphasis on supporting families with children. Access to social security: “ <u>Bismarckian</u> ” policy mechanisms for unemployment, health & pensions; mixed requirements for family benefits.
Social Democratic (Sweden)	Rights-based benefits and services at high levels; oriented toward promoting equality and full employment for all; individualised tax/benefits; policies to promote gender equality. Access to social security: “ <u>Beveridgean</u> ” policy mechanisms for health & basic pension; contributory and mixed requirements for unemployment, family and second pillar pension
Liberal (UK)	Means-tested benefits; low levels of contributory benefits; universal services; oriented to safety-net provision. Access to social security: “ <u>Beveridgean</u> ” policy mechanisms for health; contributory and mixed requirements for pension, unemployment & family benefits.
Post-communist (Bulgaria, Estonia, Hungary, Poland)	Contributory-based benefits, paid at very low levels, with very limited and low-level ‘safety-net’ provision; strong emphasis on private (pensions/health) and family (care) provision; support to families and for gender equality varies. Access to social security: “ <u>Bismarckian</u> ” policy mechanisms for pensions, unemployment and health; mixed for family benefits

Source: adapted from Carmel and Papadopoulos (2016). Original sources include, *inter alia*: Esping-Andersen (1990), Cerami and Vanhuysse (2009), Aidukaite (2011)

We find that each welfare system may adopt different mechanisms for organising eligibility conditions by policy area. (For example, all countries have a public pension which requires contributions, but Sweden also has a basic pension based on residency, while the UK pension is paid at a flat rate, so that the final pension income is not linked to level of contributions.) As a result, within each welfare system, a mix of eligibility mechanisms can be expected, linked to different types of conditionality. Furthermore, we can observe that a number of countries have more than one benefit in each policy area, and that the eligibility mechanisms affecting these frequently differ even within one country. (For example, Bulgaria, Germany and Sweden all have both a contributory ‘unemployment insurance’ benefit (strongly Bismarckian), and an ‘unemployment assistance’ benefit, where the amount paid, and contributions required, imply a rather mixed mechanism of eligibility between need, residence and contributions.) Finally, the eligibility conditions for accessing (and therefore porting) benefits may be mixed for one type of benefit. (For example, conditions of residence and employment contributions may be required to access certain family benefits as in Austria and Poland). It is important, then to recognise that while our EU8 country cases overall have lower expenditures than EU15, and while our EU8 country cases conform to a generalised ‘post-communist’ world of welfare, there are some marked differences among both the EU15 and the EU8 countries in our study, (Aidukaite 2009).

So far in this section, we have addressed general welfare system differences and the different mechanisms that secure eligibility to benefits and services. Now we turn to how these mixed and diverse mechanisms might matter for analysing SSP regulation between our country-pair cases, and in particular, how it might vary by policy area.

4.3 Diversity in benefits and implications for SSP regulation in changing socio-economic contexts

In the 883/2004 Regulation, a number of new benefits, not of the classic ‘social insurance’ variety, were made subject to co-ordination rules. The entitlement of workers, and in some cases, non-worker EU nationals, to access benefit on equal terms with nationals under the Citizen’s Directive also generated possibilities for exporting non-contributory social benefits from one member state to another (notably, some child benefits). The initial categorisation of a benefit in Regulation 883/2004 is crucial for shaping whether it should be subject to co-ordination rules at all, and then, which co-ordination rules apply. We know that benefit categorisations and conditionality is important in shaping access, entitlement and portability. We also know that these categorisations and conditionality vary by welfare system (as well as over time).

So what do we know about the variation in SSP regulation for different types of benefit and how are they shaped by changing socio-economic contexts of work, mobility and family life?

4.3.1 Unemployment

Assessing the EU policies and framework as they apply bi-laterally between pairs of member states is made more difficult as they are caught between technical legal specificity and highly politicised domestic contexts, especially in relation to unemployment benefits. As we will show in sections six and seven, generalised increases in conditionality especially in relation to unemployment, challenge the presumption that vested rights (of contributions) are straightforwardly related to social security eligibility (and thus portability). Indeed, to some extent this has always been the case; as Clasen and Clegg (2007) have identified, there is more than one kind of condition that is applied to social security eligibility. They classify three types: conditions of category (are you unemployed, a mother, disabled), circumstance (impoverished, with contributions), and conduct (most important for unemployed). It is conditions of conduct that recent policy reforms towards ‘social investment’ have enhanced (e.g. van Berkel et al. 2012). For EU migrants, as we saw in section three, these conditions are also shaped by jurisprudence on ‘genuine and effective work’, ‘habitual residence’, and ‘genuine chance of being engaged’, creating a distinctive mix of conditions of category, circumstance and conduct which must apply in their case, as we show in detail in sections six and seven.

Unemployment assistance, which has been at the heart of ‘activating’ reforms in the EU 15 over the last two decades, is variously categorised by member states to be (or not be) a ‘social security benefit’. This in turn determines whether conditionality of this benefit at national level is regulated by 883/2004, and its associated case law. In this case, definitions of what is work and who is a worker is vital, and a number of member states, including three countries in the TRANSWEL study, Germany, Austria and the UK have each recently tightened their criteria for what counts as “genuine and effective work”, which is so important for conditioning access and portability of social security in practice (O’Brien et al 2016).

With increases in precarious employment in many member states, then this could become a burden on migrant workers to show that they are, indeed, workers (O’Brien et al. 2016). The changes in patterns of employment, especially increased precarious and so-called ‘atypical’ employment¹¹, with consequently reduced access to social insurance directly affect access to and portability of benefits. The wide interpretation of ‘work’ and ‘worker’ in free movement and case law sits very uneasily with member states’ definitions, even though EU case law allows for granting of rights to precarious workers which can help the protection of mobile citizens. The privileging of ‘worker’ status and the treatment of rules and protections for non-workers as ‘exceptional’ matters. The question of what is work, and who is a worker, shapes the transnational (sending and receiving countries’)

¹¹ A catch-all term referring to any employment that is fixed term, part-time (including variable hours), or not directly with the employer for whom the work is carried out (ie agency work).

(non)implementation of EU laws, and thus the relations of inclusion/exclusion that underpin SSP in member states, but it does so in ambiguous ways (for a recent analysis on the UK, see Shutes (2016)). These definitional questions about the worker and work are of central importance for reform of EU policy in this area. Furthermore, mobile citizens' social rights are problematically related to the issue of 'work'.

In the context of labour market dualisation in our Austrian and German cases (Palier 2010, Seeleib-Kaiser 2011), as well as already extensive precarity in the UK, and low levels of employment protection in the post-communist welfare states (at its most extreme in Estonia), these legal definitions confront a European political economy which positions ever more of such ambiguously defined 'workers' as precariously employed (Berggren et al. 2007a, b). Furthermore, our interviews with policy experts showed that with increased conditionality of benefits, comes reduced political legitimacy for portability. Thus if strict conditions apply for receipt of unemployment benefit in country A, why should a claimant be able to move to country B, and receive the same benefit, without having to fulfil such conditions? (also Jorens et al 2013).

In our study, this would lead us to expect that migrants with regular employment biographies, moving between welfare systems with strongly contributory systems, would be able to access and port unemployment *insurance* benefits (Bulgaria-Germany; Hungary-Austria; Estonia-Sweden). In these cases, the most *financially* beneficial strategy would vary according to the direction of migration, and, as we will see in sections 6 and 7, the type of migration as well (e.g. temporary/permanent)¹².

However, all these cases rest on assumptions about the ability of EU migrants to secure such portability, and they do not address questions of eligibility for unemployment assistance, with their more mixed conditions, and sometimes (cf Germany and the UK) strongly conditional requirements, nor how these intersect with residence requirements. These cases are discussed more fully in sections six and seven.

4.3.2 Family benefits

Of all our policy areas, family benefits present the most diverse set of benefits, with distinct underpinning norms and expectations, different purposes, and embedded in various definitions of the 'family', and different approaches to state provision of financial support for families (Lewis et al. 2008, Inglot et al. 2012, Javornik 2014). They are also the set of benefits which least conform to social security co-ordination Regulation 883/2004. As discussed in section 4.1, 883/2004 included some benefits in the co-ordination mechanism for the first time – notably in recognition of the expansion of the rights of employed parents to maternity, paternity and parental leave benefits. (This was itself a recognition of the changes in employment patterns from the Fordist, male breadwinner model which was so important in the founding regulation of SSP in the EU.) While these benefits were included in 883/2004 in recognition of EU migrants' worker-parent status, domestic policies can be tied to additional conditions of conduct (e.g. in Austria, requiring certified medical check-ups during pregnancy), or which might involve very different gendering of benefits (e.g. Sweden and Germany provide specific incentives for fathers to take parental leave, while in other cases, the bulk of leave is only available to mothers).

Families of migrants, including dependant children, do not always reside with their migrant parents. They may come and go at different points in their education, and they may be resident with the other parent as a result of relationship separation or simply due to migration. Those countries that

¹² According to the EU framework of course, the degree of mobility between countries should not in principle, affect portability; the purpose of Regulation 883/2004 as described in section three above, is to overcome disadvantages of mobility.

offer family benefits for the *upbringing* of resident children are generally not portable, as the definition of the benefit itself determines the need for co-residence of both parent and child in the household. However, the requirement for equal treatment led to the availability of child benefit for the children of nationals and EU nationals, even where those children live abroad. This ‘portability’ then, does not come from Regulation 883/2004, but the Citizens’ Directive 2004/38. Following politicization of this benefit entitlement, especially in Germany and the UK, it is now possible for the member state where the parent is resident to pay the child benefit at the same level as the member state where the child is resident.

These differences present a more complex and nuanced relationship between accumulation of contributions, securing entitlement, and the ability to port contributions and benefits, than is implied in the classic conceptualization of portability we showed in figure one. These differences also imply that sensitivity to possible incompatibilities between welfare systems could be particularly significant for our analysis of these benefits (and also very important, given their potentially gendered effects.)

This diversity, and sets up a rather ambivalent relationship between the organization of family benefits and the assumptions of SSP regulation (around contributions, and the nature of employment, for example). In our study, we would expect somewhat complex and perhaps problematic arrangements in SSP regulation across all four country-pair cases for family benefits, except in relation to child benefit, where the jurisprudence is explicit and benefits straightforward to conceptualise as equivalent.

4.3.3 Health insurance/healthcare

In relation to healthcare, the European Health Insurance Card (EHIC) was a significant innovation in transnational social provision, introduced at the same time as 883/2004 reforming social security co-ordination. It acts as a mechanism for the portability of health insurance (and healthcare coverage in Beveridgean systems). The EHIC must be applied for in the country of residence, but can be presented to pay for emergency healthcare in any other member state in the first three months of residence (what counts as emergency is broadly defined). The costs of that healthcare are then reimbursed to the member state by the country of residence. In addition, the 2011 Directive on cross-border healthcare could also be used by mobile citizens, seeking treatment for approved procedures in another Member state. However, overlapping rules are likely to make already very complex legislation on health more difficult for migrants to understand. Greer and Sokol (2014: 20) argue that although the CJEU reinforces the right to health care in all EU countries, access to healthcare remains unequal because health care in each member state is different. ‘[T]he ECJ [*sic*] has developed a second-order jurisprudence of social citizenship rights and therefore of EU social citizenship as a set of rules for determining the legitimate content of Member States’ social citizenship rights....it is moving towards ‘rules for rights’: setting principles by which to judge the rules Member States use to make decisions about social rights.’¹³ As we will see in sections six, seven and eight, below, the emphasis on ‘rules for rights’ which marks the attempt to protect member state subsidiarity in social protection can generate a high degree of legal and institutional complexity, and thus barriers to access and portability, in healthcare and other domains of social security.

In our study, we would expect that healthcare coverage for very short-term movement of migrants would be unproblematic: institutionally, the EHIC represents a full Europeanisation of SSP regulation. Furthermore, we would expect migrants moving between insurance-based healthcare systems

¹³ This concept of ‘rules for rights’ also appears relevant in the jurisprudence on social assistance, which has been increasingly accepting of member state restrictions on benefits for economic inactive EU citizens (cases of Dano, Alimanovic, Commission vs UK, discussed in section three above.)

(Bulgaria-Germany, Hungary-Austria) to face least difficulties in porting their health insurance rights, and having these recognised in their country of migration and return, due to the good institutional fit bilaterally (similar welfare arrangements) and multi-laterally (the contributory basis fits with the underpinning rationale of social security co-ordination). It is, however, unclear how migrants' access to health insurance might be affected by the institutional complexity of health insurance arrangements in more marketised systems (affecting our Bulgaria-Germany case) and federally diverse systems (affecting our Hungary-Austria case and Bulgaria-Germany case). It is also less clear how migrants' rights to access and port healthcare cover might affect moving between hybrid insurance/tax-based systems of post-communist welfare states and tax-based "Beveridgean" systems (Estonia-Sweden, Poland-UK). In Sweden and the UK special arrangements might be expected, in order to distinguish between EU workers, entitled to access healthcare on the same basis as nationals, and EU non-workers, who under the EU framework are expected to have 'comprehensive health insurance'. In all our country-pair cases, we might expect cross-cutting regulatory effects of the Directive on cross-border healthcare, as the minimum requirements set out in this Directive enables EU nationals to access (some) healthcare in another member state, rather than formally seeking health insurance cover in their country of residence.

4.3.4 Pensions

As we saw in section 2.1, the portability of pensions is relatively well-understood, both generally and in the EU. The literature on SSP regulation almost exclusively explores old-age benefits, because it is particularly important for securing these long-term benefits, and as often they require long-term contributions, and these contributions would otherwise be lost in the process of migration. Such benefits have the biggest financial implications for the countries of residence (Holzmann and Koettl 2014). For current workers, each of our TRANSWEL country cases has a contributory public pension scheme, in some cases offering future pensions at low levels of benefit (Bulgaria, Estonia, Hungary, Poland and the UK). Across all eight cases, there are diverse requirements for individuals to have additional private personal or occupational pensions.

In our study, in general, we would expect the portability of pension contributions and benefits to be the least problematic for migrants, relative to other social security benefits. Pensions rely on contributions over the long-term, where the amount of final benefit is least affected by short-term moves. In all our eight cases, the contributory principle is applied, except for the Swedish basic pension, which is residence-based. We would expect migrants moving between countries with "Bismarckian" welfare systems to face the least restrictions (Bulgaria-Germany, Austria-Hungary), as these rely strongly on the contributory principle that underpins social security co-ordination in the EU. A move between similarly structured systems also represents a good institutional fit for the transfer of vested rights (our Bulgaria-Germany case). Migrants facing least losses will be those moving between systems with shorter minimum contributions periods.

However, Dwyer and Papadimitriou (2006) expose the ways in which the EU policy and Member State policy can weaken the social security rights of older migrant EU citizens when they choose to move to another Member State following retirement from the paid labour market. Meyer et al. (2013: 724) show that gaps in regulation on pensions at EU and national levels 'expos[e] workers to the distortions that affect early leavers of schemes'. Consequently, the situation of mobile people on retirement depends on movement between varying types of pension systems, and can be problematic or disadvantageous for certain types of workers. Meyer et al (2013) found that low-income workers who move from a Beveridgean system to a Bismarckian are most vulnerable to a pension loss because there is stronger redistribution in the Beveridgean systems. In contrast, migrants moving from the poorer East to the richer West (or from Bismarckian systems to Beveridgean systems) are more likely to gain than to lose, *as long as they spend a substantial time working in the country of immigration* (generating contributions and entitlements) (Meyer, Bridgen

and Andow 2013). We have emphasised this caveat to their argument, as it implies that EU workers with higher mobility, perhaps moving between pension systems more than once or twice, may face more losses to their final pension income. It could thus significantly affect the socio-economic implications of how relationship of mobility, work and residence are constructed in our four country-pair cases. In addition, given the complexity of contribution mechanisms for individual pension systems in practice, we should attend to how these might affect the more precariously employed and the more mobile, which may reveal socio-economic inequalities in how the dynamic relationship between mobility, work and residence embedded in regulations might play out for EU mobile workers in practice.

4.4 Summary

The social security coordination mechanism within the EU Member States is not neutral in its effects at the country level due to differences between welfare systems and their traditions. Managing the tension between changed contexts and migrant experiences with the underpinning assumptions of the key regulation (883/2004 and 987/2007) is one of the key factors behind burgeoning EU case law and changes in domestic regulation changes. Thus also increasing complexity of the overall regulatory environment, within which migrants and social security decision-makers must operate. Indeed, many of the complexities of SSP regulation which we identify in sections six to eight of this working paper stem from such unresolved and half-resolved contradictions and tensions between EU regulations, and transnational (bilateral) regulatory fit, the contrasting assumptions that underpin these regulations bilaterally and in the wider EU framework, and the rather more complex and rapidly changing patterns and experiences of mobility and employment.¹⁴

¹⁴ Migrants who undertake employment below any minimum threshold, or who work informally, of course, would not be covered by these regulations in terms of portability at all. In later workpackages of TRANSWEL, we explore the experiences of EU workers with experience of irregular employment.

V Summary of methodology and methods

A full exposition of the research design, methodology and methods for the research presented in this paper can be found in a separate methodological report.¹⁵ Here we provide a summative overview of the interpretive approach to policy analysis underpinning the research strategy, and indicate how the comparative and the transnational elements of the research were integrated.

5.1 Interpretive policy analysis

The research strategy and methodology developed for our policy analysis needed to generate robust data to systematically analyse and compare the principles and underpinning rationales of SSP regulation in our 4 country-pair cases. This in turn would enable us to address our second research question and explore how welfare systems' conditionalities organize, condition, and set limits to the acquisition and portability of social security rights. An inductive, transnational and comparative research design that considers the 'sending' and the 'receiving' countries' perspectives was developed for the regulatory analysis. Befitting our interest in how the dynamic relations between mobility, residence and work are inscribed in SSP regulation (section 2.1), and how they generate and shape possibilities for inclusion, exclusion and stratification, overall, our approach was informed by perspectives from Interpretive Policy Analysis (Yanow 2000, Schwartz-Shea and Yanow 2012).

IPA is an umbrella term, referring to phenomenological policy analysis, which analyses both the processes of policy production, and policies themselves, as meaning-making, and meaning-bearing process (Wagenaar 2011). Typically, IPA strongly emphasises qualitative research methods, such as standard or documentary ethnographies, discourse analysis, and/or narrative analysis. The emphasis is on understanding the highly contextualized socio-political conditions in which 'policy' is produced and practiced, or in which discourses and practices become 'policy' (Yanow and Schwartz-Shea 2014).

As we showed in sections three and four, the formal EU framework of law and jurisprudence is historically variable and contingently subject to re-interpretation over time. In addition, the EU framework itself changes meaning in processes of subject to political and policy 'translation' (Clarke et al. 2015) re-interpretation and re-construction. SSP regulation, and its underpinning rationales, has varied significance for different migrants, and in different socio-economic and institutional contexts. As we have also seen, classic distinctions in the literature, between "Beveridgean" and "Bismarckian" mechanisms of eligibility, or between different welfare regimes, point to important features which might affect SSP. However, specific benefits are subject to more varied or mixed mechanisms of eligibility and SSP regulation is of course also embedded in cross-cutting transnational regulations at the EU level. A prior analytical framework based on these existing concepts developed for national welfare states would have not enabled us to identify the transnational (bilateral) SSP regulation, nor how these intersected with the supranational (European) legal framework.

In keeping with a broad IPA approach, then, an inductive research strategy was developed with a view to identifying the assemblage(s) of SSP regulation that transnationally structure the portability of EU migrants' social security rights (research question one). Eventually the aim of our research strategy was to (re)construct how these assemblage(s) of SSP regulation (Amelina 2016 f/c) establish conditions to portability for different categories of migrant in our four country-pair cases, and to make visible the conditionalities which shape the acquisition and exercise of social security

¹⁵ This is available from the authors at: E.K.Carmel@bath.ac.uk.

portability. Such a ‘reconstructive’ analysis requires highly contextualised and reflexive treatment of formal legal regulations. It is open-ended, demanding and iterative approach to policy analysis – even in one country case (Carmel 1999, 2017 f/c). However, it was in working inductively that we were able to address how conventional domestic regulations on social security access are implicated in shaping social security portability for EU migrants.

5.2 Research design, strategy and process

Our research design was oriented to the generation of data and procedures for our interpretive analysis, in order to illuminate, and compare the implicit logics and rationalities, which underpin the principles of portability instantiated in the regulations we analysed. We had to compare several aspects of SSP regulation:

- Country pair cases, examining portability related to migration between two specific welfare systems
- Policy domains
- Migrant categories
- Institutional conditions
- Relationship to the EU regulatory framework

This analysis is therefore is transnational in two dimensions: both bilaterally in country-pairs but also how those country-pairs’ regulatory framework is embedded in transnational portability governance across the EU., as well as comparative across the country-pair cases. Our first step for comparability was to identify the functional equivalents of benefits across our four policy areas. For each of our four policy areas, we examined broad functional equivalents:

Unemployment benefits: unemployment insurance and unemployment assistance

Family benefits: child benefit, maternity, paternity and parental leave & benefits; childcare/raising benefits

Healthcare: health insurance and sickness insurance

Old age pensions: basic state pension and ‘second pillar’ public or statutory pension

The full list of selected equivalents in languages of origin is presented in tables in annex 1.

The data was collated in a series of tables by individual country teams, providing details of the formal regulations and their interpretation. The data was sourced from laws, secondary legislation and regulatory guidelines, including quantitative data where available, and secondary literature in all eight countries.

In addition to the detailed documentary analysis, the TRANSWEL research teams conducted interviews with 16 key informant interviews, such as welfare rights workers, lawyers and practitioners, which were particularly vital in generating, clarifying and specifying the content of the transnational comparative tables. A further 28 senior policy experts, officials from ministries, policy advisors and senior legal experts were interviewed to gain insight into their interpretations, experiences and understandings of EU regulation of social security rights of free movers and its intersection with their national context.

In keeping with the interpretive and inductive approach, while wishing to have a systematic framework for the comparative analysis, we chose to develop the research step-wise and in a highly iterative process. Each step involved the generation and organization of data to enhance our

understanding of the conditions shaping portability which are contained in, or produced by, the transnational regulatory frameworks of social provisions in our four country-pair cases.

The key steps were:

- 1) Summarising the key conditions affecting access to social rights in tables for each all of our 8 countries by each country team. This was supplemented with a contextual presentation of secondary information on the welfare system, migration and political context around EU migration. A comparative interrogation of this data by the authors of this report resulted in iterative questions on individual cases.
- 2) Production of revised *transnational* tables by each country team identifying key conditions affecting mobile citizens in our *country pair cases*. A comparative interrogation of this data resulted in further iterative questions on individual country-pair cases.
- 3) A third set of data were then produced by each country team, to explore the conditions shaping portability in relation to *specific categories of migrant* in each *country-pair case*. These categories of migrant at their crudest are: the one-time migrant, the returnee and the temporary/circular migrant.
- 4) The final, and very significant, contributing source of data were the summaries of interviews with senior policy experts in each country-pair case.

Overall, our research exposed the regulatory conditions under which EU mobile citizens might experience portability. This was achieved by identifying, analyzing and evaluating the institutional conditions for portability of social rights by policy area and country pair.

5.3 Comparative transnational data analysis

Given the migrant-centred focus of TRANSWEL overall, it was important for us to be able to compare the implications of welfare conditionalities produced in SSP regulation in our country-pair cases, as reflected in our second research question, and our interest in the transnational governance of portability. To undertake this analysis, we drew on the contributions of the ‘model families method’ in policy research (e.g. Kilkey 2000, Bradshaw and Finch 2002).

During our analysis at stage (2) - comparing the transnational regulations shaping SSP between our paired EU8 and EU15 countries - we identified three broad categories of migrant for whom access to social security rights is strongly shaped by their mobility history:

- The one-time migrant
- The returnee
- The circular/temporary migrant

These three categories of EU mobile citizens are particularly important as the length of residency (and length of contributions) influence their ability to access and port social security rights and/or benefits. Conditionalities in SSP regulation in the EU framework, as well as eligibility criteria at the national level have different implications for different categories of migrants. In stage three of our research, the TRANSWEL researchers compiled tables to systematically compare how their transnational country-pair case established conditionality for each category of migrant. These categories of migrant were further specified according to their mobility history (as part of TRANSWEL’s interest in temporary and permanent migration, and mobility). Annex 2 provides a sample table for this data.

Our summative comparison, involved synthesizing the findings from the descriptions of welfare systems with the findings regarding conditionality faced by specific categories (and ‘sub-categories’) of migrant. It was this stage of research that enabled us to consider the implications of this analysis by migrant category. Thus our final comparative analysis we developed tables for each benefit and country-pair case to compare

- **Conditions affecting an individual’s access to social security rights** for each benefit type in a country-pair case (*the columns of these tables*)
- **Assemblages of conditions** acting together as **portability-gateways** for each benefit type in a country-pair case (*each row in our tables*)

The individual conditions were identified by analyzing and comparing the how the regulations between our EU8 and EU15 constructed or assembled specific combinations of condition faced by particular migrant categories. These conditions were analysed and set out systematically in the format indicated below (table 5.1) for each benefit in each of our four (country-pair) cases. Annex 3 outlines the analysis and weighting of these specific conditions by country pair case and where necessary explains the rationale for selecting criteria in this way. The identification of these conditions forms both part of our findings, as well as the backdrop to the comparative analysis by benefit type presented in section seven. Details of each condition, and why they are important in general, are provided in section 7.1.¹⁶

Table 5.1 Institutional conditions for portability of social rights – sample table

System/ benefit	EU right	Residency			Contributions			Operational			
		HR	Length	Additional requirement	Length	(Dis)continuity	Income threshold	Length of entitlement	Procedural Requirements	Institutional Complexity	Discretion

When weighing up the significance of individual conditions, we also needed to consider that some individual conditions are more significant than others; the significance of particular conditions may vary by policy area; the interplay of different conditions matters as much as a simple ‘sum’ of conditions; countries may choose to create barriers to portability in different ways, usually because of actual or perceived logics and purposes of their welfare systems and of individual benefits.

Therefore, our assessment, presented in section seven, is based on iterative (and repetitive) analysis of the relative importance of these conditions, individually and in combination, especially on the relationship between these conditions within different policy areas.¹⁷

¹⁶ We considered providing a summary evaluation of the ‘degree’ of conditionality for each row in this table. This would have offered a single reference point for each benefit in each country, defining the degree of conditionality on portability. However, the interlocking characteristics of conditionality, the degree of speculative judgement involved, and because we were exploring 4 transnational country-pair cases out of a much larger possible universe of EU portability cases, meant that it was inappropriate to offer this additional qualitative judgement. As a result, we returned our analytical focus to analyzing the conditions shaping portability, in particular seeking ‘gateways’ to portability, that is, sets of key conditions which jointly shape portability across policy areas and country-pair cases.

¹⁷ On the basis that you need different criteria for assessing conditionality in pensions portability than you do for family benefits, for example.

5.4 Summary

Overall, one of the most striking features of the trajectory of the research and analysis for the research presented in this working papers is, first, that the inductive method was fundamental in ensuring that we maintained both the transnational and comparative dimensions to our analysis. Second, that the inductive method enabled us to explore and generate data which we might have overlooked, had we started only with a system-based questionnaire designed using pre-existing information, more common in the 'model families method' which originally inspired our approach to addressing the rights of different categories of migrant.

Third, and by far the most important, is that the research process acted like a mirror image of the EU regulatory framework itself. That is, we started with the formal regulations, relatively neatly tabulated, and organised by reference to a number of descriptive questions. These questions were developed from our analytical assumptions about the relevance of key criteria of conditionality, and knowledge of formal regulations. However, it was in the interstices between the divergent answers that these questions prompted from the four research teams of TRANSWEL that our comparison revealed uncertainty as well diversity in the transnational regulation of portability. It was thus in the informal, the iterative, the persistent and the patient that the significance of institutional complexity, procedural demands, and dark patches of poorly understood discretion in transnational regulation of portability was revealed.

VI Comparing the regulation of social security portability transnationally by country-pair cases

This section presents findings on our country-pair cases as a whole. We found that overall, the intersection of EU formal regulations, and domestic rules on benefit eligibility resulted in complex, often confusing, and sometimes indeterminate practices of SSP regulation.

Partly reflecting this complexity in practices, our comparison did not find a clear cut distinction between cases with more strongly ‘Bismarckian’ eligibility mechanisms (Bulgaria-German, Hungary-Austria) on the one hand, and the Beveridgean cases (Estonia-Sweden, Poland-UK) on the other. Rather the Bulgaria-Germany case, which in general does conform to expectations regarding its ‘fit’ with the EU regulatory framework, highlighted that the characteristics of the ‘matching’ (or mismatching) of welfare systems to the EU framework in different policy domains is an important factor in determining how mechanisms of portability are transnationally structured. An examination of those policy areas and benefits that were more complex and problematic in the Bulgaria-Germany case (family benefits and unemployment assistance) were those with a less good ‘institutional fit’, and those which were more straightforward in all four country-pair cases (ie pensions), provides support for this finding.

6.1 SSP regulation for labour-mobility between Bulgaria-Germany

“Overall, German regulations and collaboration between the two countries make the portability of benefits relatively straightforward, particularly for migrants who remain in long term employment in Germany. However, more mobile migrants and those in short term or temporary employment can find it more difficult to access and to transfer entitlements in the areas of unemployment and healthcare. Migrants returning to Bulgaria can face challenges in transferring family benefits due to different approaches to data collection and in establishing entitlement.” (Amelina et al. 2016a)

Unemployment: Long and inflexible contributions periods in both countries may disadvantage more mobile workers, even in cases involving unemployment insurance benefit (ALG I). Between 2011 and 2014, the number of Bulgarians receiving *unemployment assistance* (ALG II) increased from 9% to 22% of the Bulgarian population in Germany, although the overall number is very low (BAMF 2014). Access to this basic provision for job-seekers is subject to intense scrutiny and high levels of discretion by employment agency decision-makers, and it is not portable. Residency requirements and the availability for work conditions can also exclude more mobile migrant workers from accessing this benefit.

Family benefits: Most German family benefits are not portable, but are accessible by mobile EU citizens who live and/or work in Germany. Bulgarian migrants are entitled to receive child benefit in Germany (*Kindergeld*) for their children if the migrants live, work and/or pay taxes in Germany, even if the children are living in Bulgaria. However, policy experts reported that the family benefit regulations are different in each country and the exchange of information between family benefit agencies is not optimal. Some family benefits in Bulgaria are means-tested, but German family benefit offices do not collect data on claimants’ incomes, posing difficulties for migrants returning to Bulgaria. Differences in definition of ‘family’ leads to difficulties in determining whether individuals are entitled to receive family benefits, and in which country.

Health: portability of insurance is highly specified in formal regulations, but the health insurance market is complex. Expert interviews emphasised that many mobile Bulgarian citizens do not have health insurance coverage in either country, creating difficulties for Bulgarians in need of healthcare in Germany.

Pensions: No problems were reported with access or portability.

6.2 SSP regulation for labour-mobility between Estonia-Sweden

“In all areas, with the exception of pensions, regulations are numerous, tend to be contradictory and/or ambiguous and can leave entitlement at the discretion of the decision maker. Together with many procedural requirements, the Swedish regulatory framework adds up to a complex, bureaucratic and non-transparent system that is hard to understand and navigate – and thus difficult for migrants to access. For most benefits, the Swedish Personal Identification Number (PIN) system is an obstacle to access and portability. A PIN is required to access most Swedish benefits and is also needed to register at any Swedish administration. Proof of employment as well as residency for more than one year is required for PIN acquisition – which is difficult for EU migrants in short term or temporary employment or who are more mobile. Unemployed and irregularly employed EU migrants who haven’t had formal employment in Sweden are excluded from PIN, and must show they hold comprehensive health insurance, either state or private....Waiting times for PINs are often many months.” (Runfors et al. 2016) (see also Seeleib-Kaiser et al. (2015)

Unemployment: access to, and portability of unemployment benefit and contributions is strongly determined by the employment contract in Sweden as this also affects access to PIN. Estonian unemployment insurance favours return-migrants in cases where their salary abroad has been higher than their previous Estonian salary. As the benefits are calculated by adding both the salary earned in the foreign country and in Estonia they will receive higher amounts than the rest of the population.

Family benefits: Migrants can in some cases be excluded from accessing and porting benefits to which they might otherwise be entitled. For example, the Swedish system demands splitting parental leave, but this is not common practice in Estonia. So couples where one parent is working in Estonia and the other in Sweden might meet procedural difficulties. The combination of regulatory complexity in Sweden, and discretionary decision-making in Estonia creates uncertainty and, in some cases, misinterpretations of the regulations on portability by decision-makers,

Health: access to Sweden’s tax-funded healthcare system is dependant on PIN; for those without formal employment, the threshold for ‘comprehensive health insurance’ was up until 2015, very high.

Pensions: no specific problems were reported regarding portability of pensions, although the high proportion of Estonian migrants who work in Sweden on a temporary or occasional basis (ibid) may in the long-term put these very mobile workers at a significant disadvantage (see section 4.3.4 above).

6.3 SSP regulation for labour-mobility between Hungary-Austria

“Overall, EU migrants’ social protection in Austria is strongly shaped by residency requirements and their implementation. Making contributions is a necessary but insufficient condition for migrant workers to access benefits. Meeting stringent residence requirements creates significant barriers to portability and in comparison to other case studies, the institutional complexity of the Austrian system impedes portability and can generate inequalities. Our research found that individual migrants face uncertainty regarding their rights. This uncertainty is caused by the combined effects of complexities of the legal and bureaucratic system, and the high degree of discretion in decision-making. There are some contradictory interpretations of entitlement among Austrian and Hungarian experts, especially in relation to family and unemployment benefits. This indicates that in some cases it is not obvious whether the EU or the national regulation should be applied, nor which country’s regulations should be invoked.” (Scheibelhofer et al. 2016). While Hungary has a strongly centralised social security system, the Austrian one is highly federalised, which have particular effects on family benefits and health coverage. This system difference can create problems of

communication and co-operation between institutions of the two countries. Where there are state (non-national) regulations, we take the case of Vienna as our reference point.

Our findings point to the conclusion that there are fewer obstacles to portability on the legal level but rather on the administrative level – that is, governance practice. Problems with portability may arise from institutional complexity due to the fact that benefits are administered by 22 different social insurance institutions which in turn differ in the interpretation of the legal basis. Because administrators themselves also have quite a considerable margin of manoeuvre, there migrants may encounter problems with exercising their rights.

Unemployment: issues relating to portability in these cases depend on the more general observation regarding the institutional complexity, rather than specific conditions for unemployment insurance benefit. In Vienna at least (see, e.g. Blauburger and Heindlmaier 2016) specific procedural requirements residence may also present barriers to portability.

Family benefits: For the maternity leave (*Wochengeld*) only a certificate of pregnancy and a birth certificate are necessary. For the income-based parental allowance, both 6 months of insurance contributions and certification of attendance for doctors examinations are required. While these examinations can be undertaken abroad (so conforming to non-discrimination requirements in the EU legal framework), we expect that meeting these requirements may present procedural obstacles to access this benefit. Child benefit (*Familienbeihilfe*) is also a categorical benefit, and according to our policy expert interviews, is the most exported benefit from Austria.

Health: Healthcare and health insurance is (also) organised by the state-level social insurance institutions in Austria, which may interpret the legal requirements differently. Employees above the marginal wage threshold are automatically insured. The exercise of discretion across the funds compounds the lack of clarity and may make it more difficult for migrants to secure portability of their health insurance.

Pensions: there were no specific difficulties mentioned in relation to portability of pensions in this case, apart from equalisation payments to EU pensioners residing in Austria.

6.4 SSP regulation for labour-mobility between Poland-United Kingdom

“Overall, recent reforms in the UK create more opaque decision-making processes. These have been made yet more complex by recent reforms. This can create difficulties for migrants trying to understand their rights, and for decision-makers trying to interpret regulations and exercise discretion in individual cases. Reformed residency and procedural requirements in the UK can present significant barriers to EU migrants securing unemployment and family benefits in the UK. Changes to decision-maker guidelines on what is ‘genuine and effective work’ and what counts as a ‘genuine prospect of work’ for EU migrants, may present significant barriers to EU migrants’ access to, and portability of, social security rights. These measures especially disadvantage more mobile and more precariously employed migrant workers. The high levels of discretion accorded to decision-makers enhances uncertainty for migrants”

Unemployment: Changes to key criteria introduced in 2014-15 restricted EU nationals’ access to social benefits in the UK. If someone’s previous employment does not meet the threshold for genuine and effective work, then they may lose entitlement to and therefore also portability of unemployment benefit. This may affect their right to reside in a country after six months.¹⁸ The

¹⁸ The UK is currently phasing in a new single benefit for working age people: ‘Universal Credit’. Due to its legal characterization as a social assistance benefit, it would not be available to EU jobseekers (even though it is also a benefit with employment conditions and requirements, and will be paid to unemployed people) (Dwyer and Wright 2015).

Polish contributions requirements for unemployment may disadvantage temporary/circular migrants, as well as those with interrupted work histories.

Family benefits: there is little possibility for portability of family benefits in the UK, outside child benefit. The main contributory benefit for maternity leave in the UK is tied to a single employer (and therefore also residence). Recent innovation in family benefits in Poland are strongly tied to residence as ‘child-raising’ benefits, and are not governed by portability, although Polish experts discussed the benefit as reducing push for outward migration.

Health: the British NHS has limited mechanisms for generating barriers to access, and portability does not apply due to its tax-based funding. For returnees to Poland without employment, there is the procedural barrier of having to register as unemployed in order to secure healthcare cover.

Pensions: No problems were reported in relation to portability of pensions in this case.

6.5 Comparative summary

Overall, our case comparisons demonstrate the importance of *informal conditions and barriers* for migrants both to ‘become entitled’ (to social rights), but also to ‘access their entitlements’, and therefore for the transnational portability of their social security. In the cases of Hungary-Austria, Estonia-Sweden and Poland-UK, relatively hidden regulatory mechanisms (operational systems and practices), especially in our EU15 country cases organise and dis-organise portability and access to social rights (‘receiving’ countries of each pair). In these three cases in particular it is precisely these more informal and institutional barriers which appear to transnationally structure the conditionalities affecting migrants acquisition of social security (access) and portability rights. These informal barriers may vary in each case. We did find references to discretion in the provision of unemployment benefits in the German case, but it is not yet clear whether this discretion concerns only the determination of access to unemployment assistance, or whether the application of ‘centre of life’ test also could be affecting access to unemployment insurance. In any case, the remaining three country pairs were striking for the way in which informal conditions and barriers mattered *across different policy domains*. In particular:

- **Estonia-Sweden:** procedural conditions especially those to access a Personal Identification Number (residence-based requirements around intention to stay for 12 months, and length of work contract)¹⁹ act as a pre-cursor to the generation of entitlements which can later be ported.
- **Hungary-Austria:** residence requirements, procedural demands and discretion regulate access, in secondary legislation or statutory definitions and guidelines.
- **Poland-UK:** residential conditions are more important, and there are high levels of conditionality in relation to work, including income and type of contract which act as informal barriers.

Second, the comparison also demonstrates the importance of multi-layered/multi-scaled *transnational alignment of welfare systems*, both transnationally (bilaterally, between countries) and with the EU framework). For example, the Bulgarian-German case presents the most straightforward of our four country-pair cases – it is on face value the SSP success case of our study. There is a strong alignment of “Bismarckian” eligibility mechanisms of sole reliance on social insurance contributions bilaterally and this also conforms to the assumptions of EU regulations, as outlined in section four. In this case, in general, portability regulations were well-understood, in general could be applied in rather straightforward ways, and our policy experts reported that communication was effective. This also appears to contribute to the lower informal barriers to portability identified in this case. While the literature would expect a similar alignment in respect of our other “Bismarckian” case, Hungary-Austria case, it seems that the strong federalist characteristics of Austrian welfare, may have

¹⁹ See discussion of factors that can be considered by member states when identifying ‘habitual residence’, discussed in section 3.2 above.

contributed to the importance of informal barriers in this latter case, as institutional complexity compounds regulatory complexity in relation to the EU framework. (This was confirmed by policy experts in Austria.)

In relation to these two findings, however, policy experts interviewed from our 'sending', EU8, countries rather underemphasised the problems of complexity and implementation which were so important in generating informal barriers and conditionality in our EU15 countries. The EU framework was viewed as rather straightforward to implement; problems were seen as rather technical, minor, and specific. Policy experts from the EU8 countries did raise issues regarding the alignment of welfare systems and definitions bilaterally, but these were also expressed as technical problems of administration, for which technological solutions should be developed at a faster pace (especially evident in interviews with Estonian and Bulgarian experts).

Third, from an overall EU perspective, in all cases except Bulgaria-Germany, our research found that the residency and procedural conditions, stemming directly from the transposition of EU Regulations and Directives, may in practice prevent some migrants from generating their entitlements across a number of benefits, and therefore prevent portability which these regulations were designed to facilitate.

In particular, we have already discussed in section 3.2 above, the requirement in the EU social security co-ordination regulations, for an 'economically active' migrant to prove 'centre of life' or 'habitual residence' before *accessing entitlements*, which was established in Regulations 883/2004 and 987/2009 as a means of identifying the 'competent' member state for providing, porting or financing benefits and contributions. Our findings suggest that these requirements, when combined with other national or procedural requirements, could be so discretionary and restrictive that migrants may not be able to *generate entitlement* in practice. This is especially the case if the 'economically active' migrants move between countries more than once, because administrative discretion is often especially important, and residency conditions harder to meet, in such cases. This means that the formal EU regulatory framework, designed to provide 'rights' to social security, is subverted in national regulatory practices to create obstacles to accessing those rights. Indeed, the very requirements of Regulation 883/2004 designed to generate portability of mobile workers' social security, intersect with domestic regulation in ways which can prevent such workers from generating entitlements in the first place.

Despite the general cross-case findings, however, our fourth finding is that SSP regulation transnationally structures portability by policy area/benefit in each case. This is best illustrated by attending to two exceptions to the general findings above. The alignment of welfare systems in the Bulgaria-Germany case was much more problematic in the case of family benefits, where definitions of the family were different in each country, and administrative rules were contentious, according to policy expert interviews. Another exception is that in all four transnational cases, pensions portability was least subject to informal barriers, whether of residency or employment. As expected from our discussion in section 4.3, the eligibility mechanisms in each policy area significantly structure welfare conditionalities faced on mobile EU citizens. It is the issue of variability of conditionality by policy area which is addressed in the next section.

VII Comparing conditionality of portability regulations by policy area and category of migrant

7.1 Transnational structuring of access and portability of social security for ‘economically active’ mobile EU-citizens

As discussed in section five, in order to address the second of our research questions, we need to identify how welfare conditionalities organise and selective structure migrants’ acquisition and portability of social security rights. In our transnational analysis of welfare systems, we identified the following individual conditions as establishing the terms under which migrants might access and port social security. We identified these conditions by comparing the transnational country-pair regulations (how welfare system regulations worked jointly in different policy areas, see section 4.3 and section six), and by exploring their intersection with the EU framework (section 3). While the individual conditions each play a role in generating access to social security for EU migrants, overall, their interplay shapes portability. So what are these conditions ? (see Table 5.1, above)

EU framework. The entire TRANSWEL project is premised on an investigation into the EU as a ‘portability rights’-granting domain, starting from the assumption that portability can be understood sociologically as a regime comprising several elements (regulations, discourses, practices and experiences), which each interact to shape social inequalities as a result. However, our discussion in sections three and four showed that as the characteristics and conditionalities attached to benefits vary by policy area, as well as by country case. Thus in our country-pair case comparisons we also included an evaluation of the specificity and/or restrictiveness of the EU legislative framework which applies in each case.

A. RESIDENCY

Habitual Residency/centre of life test. The HR test is in most cases a key ‘gateway’ to portability for EU migrants, although it is tested to a greater or lesser degree for different categories of migrant and it is tested with a greater or lesser degree of specificity (and demands) in different countries.

Length of residency requirements. Residency was a key criteria in all cases, sometimes as a barrier to portability and sometimes simply adding to the complexity of the regulation. Our categorisations are organized on the basis of the relevance of these lengths of time to regulations in our country-pair cases. In some cases the lengths of time relate directly to EU regulations (esp 883/2004), and in some cases these requirements are independent of EU regulation.

Additional residency requirements. In some cases – especially, of course, family benefits, but also unemployment assistance and even health insurance– additional residency requirements can establish significant conditions on access to benefits for mobile people (contributing to our ‘portability-gateway’ –the assemblage of conditions for portability).

B. CONTRIBUTIONS²⁰

Length and continuity of contributions. For mobile people, it is not just the length of contributions to an insurance scheme which matters, but also the continuity of contributions - over what time period are, for example, migrants expected to make continuous contributions in order to generate

²⁰ We originally included an assessment of the income thresholds at which contributions should be paid, which we consider important for understanding the ways in which access and portability of social security are classed. However, methodological issues with identifying the equivalence of these thresholds across our 8 countries mean that we have not included them here.

entitlement? As a result, length of contributions and continuity should be assessed jointly. To give an example, if a person must make 12 months contributions over 2 years to establish entitlement to unemployment insurance (Germany), this is less of a barrier to portability for our Bulgarian migrants than the same length of contributions over 12 months.

Length of benefit entitlement. For one-time migrants, if the time limit is very short, this may affect their position due to legal constraints on their 'recourse to public funds' or even their right to reside in the country of migration once entitlement ends. For circular migrants, the implications of extensive mobility for benefit receipt, make this condition perhaps especially important.

C. OPERATIONAL

Procedural requirements: The idea here was to capture requirements to, for example, complete forms before migrating, to register unemployed (e.g. in order to get health insurance, even if you are not entitled to unemployment insurance or assistance), undergo specific registration procedures. We assumed that for mobile EU citizens, the more demanding the procedural requirements, the higher the barrier to portability. Very often, but not only, these procedural requirements are for anyone wishing to access a benefit/entitlement, rather than migrants in particular. We identified 3 especially common procedural requirements of especial importance for migrants (which also vary by benefit type and by country-case pair). They are 1) attendance at meetings/training/medical tests more than once a month. 2) Formal registration for a special number or card, involving an interview/attendance at special tax or social insurance office. 3) Requirement to register as unemployed (even if not entitled to benefit) in order to receive another benefit.

Institutional complexity: where a migrant might have to meet the conditions or requirements established by more than one institution (e.g. a local authority and a social insurance body), or where it may not be clear which institutional body would be the more important or with a definitive position, then the mobile worker and their family will face barriers of 'institutional complexity', which could affect access and portability of their social security rights.

Discretion: The role of discretion in our analysis was especially important, and deserves further exploration than is possible in this working paper. There were two aspects of 'discretion' that shaped conditions of access and portability. First, our key informants especially, but not only, in our EU15 countries, highlighted the confusion and contradictions embedded in processes of interpreting cross-cutting national, transnational (between countries) and EU-level regulations, especially when these involved more than one institution. Regulatory lacunae and institutional gaps meant that specifying rights to portability even at quite abstract levels of legal entitlement could be difficult. This is perhaps best captured by what our AU/HU team called 'grundsätzlichkeit' – the 'in principle' answer about entitlement, which leaves actual entitlement in specific cases uncertain. Consequently the second level of discretion - of decision-makers at 'street level' - was enhanced considerably above that which would already apply in cases of conditionality for nationals.

As we saw in sections four and six above, the implications of these conditions will vary by categories of migrant status. In our case, we investigated the applicable conditions for *one-time migrants* from our EU8 to their EU15 partner country; *returnees* to the EU8 country, and the *temporary/circular* migrant who moves more than once between these two countries. In the presentation below, in order to better identify how relations of mobility, work and residence shape inclusion, exclusion and stratification between categories of migrant, we examine the conditionalities of access and portability by benefit, focusing on the implications for different categories of migrant in each case.

In the process of our research, we found that in case of return migration (to our EU8 countries of Bulgaria, Estonia, Hungary and Poland), EU free movement restrictions on benefit access would

generally only apply in the first three months, although returnees might have to prove their ‘centre of life’ had reverted back to the country of origin. Our expert and key informant interviews in the EU8 countries did not problematize the application of EU requirements for returnees.²¹

In the policy comparisons below, we focus therefore on

- a) how *assemblages* of regulatory conditions in the country pairs shape access and portability for one time migrants and returnees and
- b) how these assemblages of regulatory conditions in both countries, but *especially the country of destination* (our EU15 countries), may affect temporary/circular migrants (ie those who return back to our destinations for more than one period of work or residence).

7.2 Unemployment

Unemployment insurance is directly regulated under EU law [883/2004 and EU citizens’ directive] but access to this benefit differs across countries. For one-time migrants with contributions, there were no reported regulatory issues with access or portability. The EU framework on entitlements for portability of unemployment insurance are rather clear (see sections 3.2, and 4.3.1). However, there are also national conditions such as length of contributions, length of residence, habitual residency test or “genuine chance of being engaged” test that regulate access to unemployment benefits. In particular, long and/or continuous contributions requirements can affect entitlement and therefore porting of benefits for returnee and circular migrants.

For brevity, we use the following abbreviations for our cases: Bulgaria-Germany = BG/GE; Estonia-Sweden = ES/SE; Hungary-Austria = HU/AU; Poland-UK = PL/UK.

Table 7.1: Key regulatory conditions governing access & portability of selected cash benefits for unemployed in four EU transnational country-pairs

Case	Unemployment benefits
Bulgaria-Germany	Long and continuous contributions for ALG I; high discretion for accessing ALGII
Estonia-Sweden	procedural requirements are high but discretion is weak & short and flexible contributions are accepted
Hungary-Austria	procedural requirements are high, as is discretion. Short and flexible contributions are accepted
Poland-UK	work for 12 months and pay enough contributions & have a genuine chance of finding ‘genuine and effective work’

Source: TRANSWEL research teams and MISSOC 2015/6

In both Sweden and Austria, procedural requirements are high but only in Sweden is discretion reported as weak, even in respect of unemployment insurance. Also, in Sweden and Austria short and flexible contributions are accepted, and there is good alignment with eligibility mechanisms of Estonia and Hungary, so that one-time migrants who lose their job, and circular migrants who move between countries are not so disadvantaged in these cases.

²¹ This still needs further interrogation. In addition, more detailed analysis of these interviews is also forthcoming work in TRANSWEL, led by Ann Runfors, Florence Fröhlig and Maarja Saar.

In all cases except Sweden, where unemployment assistance is contributions-based, it is means-tested and unavailable for one-time migrants upon arrival. In Germany highly discretionary decision-making is observed (*Arbeitslosenversicherung* ALG II, which can not be ported) and in the UK, application for unemployment assistance is highly procedural and strongly discretionary as well as linked with other benefits. In contrast, in Estonia and Sweden discretion is weak, due its contributions-basis.

Exploration of conditions showed several gateway conditions to unemployment benefits for EU mobile workers. In all countries the most significant is employment and contributions, especially of course for unemployment insurance. In addition, residency requirements in the UK, and Austria, act as gateways, while complex procedural requirements in Sweden might be significant, although a special organisation, IAF, has been launched to support migrants with this. For returnees, the length of absence is significant when accessing unemployment insurance upon return as their contributions made before they left must be recognised and returnees are subjected to the centre of life test in the country of origin. In all countries returnees are more likely to be able to access this benefit if their absence was short and previous contributions were made over longer periods of time.

Regarding returnees, in Bulgaria, no specific residence requirements were reported, and the contributions requirements are rather short and flexible, facilitating EU mobile citizens who are temporary/circular migrants, or in precarious work (if they return to Bulgaria). In Estonia, “the level of unemployment benefit is calculated by adding both the salary earned in the foreign country and in Estonia returnees will receive higher amounts than the rest of the population” (Runfors, Fröhlig and Saar, 2016). For unemployment insurance benefit, applicants must be in the Estonian population register as well as registered unemployed, also implies less significant residence requirements than in Sweden. Contributions requirements are rather quite long, but flexible (12 months contributions over 3 years), making it easier to access and port benefits for mobile workers who have interrupted contributions. In Hungary, returnees are eligible for unemployment insurance [*Álláskeresési járadék*] only if they earned their entitlement abroad and transferred it to Hungary for the period of three months. Returnees are not eligible for ‘employment substituting benefit’ [*foglalkoztatást helyettesítő támogatás*]. In the case of PL-UK, procedural requirements *before* returning can be unclear and this may create barriers to accessing contributions-based unemployment benefits in Poland.

The Hungarian, Polish and Estonian cases also demonstrate some potential vulnerability of returnees who are unemployed, in relation to their access to healthcare. In Hungary, after the expiration of unemployment benefit, returnees are required to pay ‘flat-rate health care contribution’ and if unable to do so the local authority takes over the responsibility for their healthcare. In Poland and Estonia, returnees who are unemployed must register as such, even if they do not have an entitlement to unemployment benefit. Only those who do so (and their immediate family), are covered by health insurance, and thus have access to healthcare upon return. These requirements could represent important procedural obstacles to individuals’ and families’ healthcare cover if returning without regular employment.

In sum, access to, and portability of unemployment insurance benefits is problematized via requirements for long and continuous contributions requirements (BG/GE), and in some cases by procedural conditions (Sweden), and residency requirements (Austria, UK). For retained workers and job-seekers with lower contributions (or who did not register their previous contributions from their employment in another member state), the higher conditionalities of unemployment assistance would be invoked (see section 4.3.2)

Consequently, all three group of migrants: 1) the one-time migrant; 2) the returnee and 3) the temporary (including circular) migrants may face short or long term vulnerabilities at destination upon arrival, or at the later stage of their migration history. Access to unemployment assistance in Germany (not portable) and even unemployment insurance in the HU/AU case is problematic for all three types of migrants due to the high discretion and complex administrative requirements. In turn, in Sweden although discretion is weak and short and flexible contributions are accepted procedural requirements are high (section 6.2). Overall, our research has not found significant regulatory barriers for returnees in accessing benefits (or receiving benefits ported from the previous country of migration). The Hungarian and Polish cases might however alert us to possible inequalities for unemployed returnees in relation to healthcare.

7.3 Family benefits

Our analysis of eligibility criteria exposed a complex matrix of conditionality to access family benefits transnationally, or port contributions. In our research we look at maternity leave, parental leave, parental leave plus associated benefits and child benefit. For family benefits, we discuss the situation of returnees in a separate sub-section below (section 7.3.5), rather than by benefit, due to the (paradoxical) diversity of benefits, and common conditionalities which apply in our EU8 'sending' countries.

7.3.1 Maternity leave benefit

Sweden does not have maternity leave, but subsumes all leave under parental leave, discussed below. In all our other cases, maternity leave [see table 7.2] is linked to the employment and/or length of contributions that has been made. Germany, Austria and the UK all provide a flat-rate benefit designed for mothers with lower incomes. While procedural requirements in Germany and the UK are low in terms of accessing maternity leave benefit, in Austria they are mid-level. To and from the UK, maternity leave benefit is not portable.

In Germany access to and level of maternity allowance (*Mutterschaftsgeld*) varies as it is based on existing income from employment. *Mutterschaftsgeld* can be paid from first day of employment. Women insured through a private health insurance company, as well as women working 'mini-jobs' may receive a maximum one-time payment of €210. Individuals while choosing their health insurance may include maternity insurance, but they do not have to.

In Austria maternity leave benefit (*Wochengeld*) constitutes an income substitution during the period of maternity protection when women are not allowed to work (usually 8 weeks before and 8 weeks after giving birth) The level of maternity benefit is calculated individually on the basis of net income in the previous 13 weeks, and it is paid for duration of eight weeks before due date. Self-employed women are entitled to a flat-rate benefit. Mothers in marginal employment and those in receipt of unemployment benefit are also entitled to *Wochengeld* but in the case of marginal employees it might be significantly lower. *Wochengeld* can be claimed from the first day of employment in Austria as previous insurance periods are recognised. Procedural requirements surrounding access to *Wochengeld* are mid-level. There are three conditions: employment at least one day in AT, certificate about pregnancy and calculated day of birth prior giving birth, after giving birth the birth certificate of the new-born.

Table 7.2. Key conditions governing portability of selected family benefits in four EU transnational country-pairs

Case	Maternity leave benefit	Parental leave benefits	Parental allowance	Child benefit
Bulgaria-Germany	based on existing income from employment	Residency requirements	N/A	If both parents are entitled (in different countries), benefit can be paid by either country, providing that the second country will pay a supplement corresponding to the difference between the two benefits. The difference is not paid when the right to child benefits is only based on residence.
Estonia-Sweden	N/A	emphasis on residency & strong procedural requirements	administered by municipality & highly procedural; institutional complexity	high procedural requirements & parent residing in Sweden must have custody of (but need not reside with) the child. Where parents in each country have entitlement, benefit can be paid by either country, providing that the second country will pay a supplement corresponding to the difference between the two benefits
Hungary-Austria	based on existing income from employment, mid-level procedural requirements from the first day of employment in Austria	N/A	High procedural requirements given principle of equivalence	mid-level procedural requirements, around residence
Poland-UK	long contributions & residency	N/A	N/A	3 months waiting period, children can reside with claimant or in another country, no 'supplement' where equivalent benefit is available. ²²

Source: TRANSWEL research teams and MISSOC 2015/6

Some similarities exist in the UK where there are also two types of maternity leave. An EU citizen is eligible for statutory maternity pay (SMP) if they worked for a single employer continuously for at least 26 weeks up to the 'qualifying week' (15th week before the expected week of childbirth). A lower level maternity allowance (SMA) is eligible for individuals who are also employed, with a lower contributions threshold for a shorter period (13 out of 66 weeks before the baby is due). Maternity allowance does not require employment with a single employer and so falls under portability regulations, but the amount of benefit is much lower than SMP, so that these effects disadvantage prospective and recent migrants who fall pregnant: by either excluding them from benefit or by assigning them to the lower SMA benefit. Access to both benefits is not discretionary and procedural requirements are straightforward.

²² In 2016, PL introduced a new child benefit, which intersects in interesting ways with UK child benefit (e.g. in relation to levels of benefit for child 1, 2, 3). Full exploration of this remains outside the scope of this comparative paper.

Accessing maternity leave by EU mobile mothers can be problematic. In the three ‘receiving’ countries of our study that provide maternity leave, all categories of pregnant or new mother mobile workers are faced with class-based vulnerabilities at destination. This is more evident in Austria and the UK, with their requirements for preceding 6 months of contributions. However, while in Austria insurance periods in other EU MS are recognised, following Regulation 883/2004, in the PL/UK case, income-based maternity pay is not portable, further increasing likelihood of receiving the lower level benefit.

Thus, all categories of mobile EU pregnant workers may access maternity leave in our relevant three country-pair cases (ie excluding ES/SE). However, the conditionality attached to contributions may imply a gendering (and additional socio-economic inequality) effect on migration experiences for Hungarian mothers in Austria and Polish mothers in the UK (see ‘parental leave’ for discussion of SE/EE case).

7.3.2 Parental leave plus associated benefits

There is no functional equivalent of parental leave [Table 5] in Austria or the UK.

In Germany *Elterngeld* is paid for up to 14 months from the date of birth of the child. The recipient(s) must be ordinarily resident in Germany and live in the same household as the child. EU citizens are eligible for *Elterngeld* if they are employed, self-employed, housewives/husbands or students. The benefit is calculated based on the net income of the applicant in the twelve months prior to the birth of a child. If the parent is in receipt of unemployment insurance benefit, or had no other prior income, they are entitled to the minimum *Elterngeld* of 300 euros per month (providing they meet the residence criteria).

In Sweden, earnings-related parental leave benefit is contributions based, while the flat rate parental leave is a residency-based benefit. An EU-national parent who resides with a child in Sweden is eligible to this latter benefit; contributions are not required. This benefit is paid until child turns eight years of age or finishes year one in school.

In both cases, the emphasis on residency suggests relatively straightforward access to benefit at least at the minimum level. However, in practice, access may be challenging due to discretionary requirements (proving centre of life), notably for receipt of the flat-rate parental allowances.

7.3.3 Parental allowance (child-rearing benefits)

In Germany parental allowance (*Betreuungsgeld* - child rising benefit), was abolished from 1st of August 2015 and no replacement was introduced. In Sweden child allowance is administered by the local municipality but in 2015 this benefit is not provided in Stockholm where this research is based. There is no parental allowance [Table 5] in the UK.

In Austria there are two types of parental allowances. The first is *Kinderbetreuungsgeld*, a universal benefit not linked with employment. Generally, for this benefit children are required to live in the same household as applicant in Austria, but for EU citizens it is possible to apply for *Kinderbetreuungsgeld* on behalf of children residing abroad in certain cases²³. This is the case when one parent works in Austria and the other is inactive and lives with the child in the other EU country. This benefit can be paid for up to 3 years.

²³ Policy experts highlighted the importance of the parent and child being legally resident in an EU country, passing mother-child examinations, and having centre of vital interest in the country of portability.

The second type is income-based *Kinderbetreuungsgeld* which is linked with minimum six months contributions immediately prior to the birth of the child. This benefit is administered by the social insurance institutions and its duration is limited to 12-months (if one parent claims) and 14 months if both claim. The applicant must have employment subject to Austrian social insurance in the last 6 months prior to giving birth (in certain cases, the insurance periods can be accumulated according to the EU regulation.) In the Austrian case, gateway conditions for accessing parental allowance are strictly linked with parents' and child' residency, although it is portable in certain cases, it is highly procedural and the income-based benefit is subject to institutional complexity because *Kinderbetreuungsgeld* is organised by the different social insurance institutions. The combination of requirements and with middle to high discretionary barriers (depending on the benefit and insurance institution) can problematize access to this benefit for migrants.

7.3.4 Child benefit

In Germany, Austria and the UK, EU migrants need to acquire habitual residency before making a claim for child benefit, while in Sweden such a claim can be made at the point of entry.

Kindergeld in Germany is not income-based and can be claimed until the children turn 18, or 25 if they are in full-time education. *Kindergeld* can be claimed on behalf of the children who reside in other Member States. If claimed in the child's country of residence the amount that they receive is deducted from the amount received in Germany. If the benefit they receive is more than the *Kindergeld* then the claim in Germany will not be eligible.

EU citizens are entitled to child benefit in Sweden if the child resides with them, or in another EU country. This benefit can be claimed from first day of residency in Sweden and it can be obtained from the time of the child's birth until 16 years of age or longer if they remain in education.

In Austria child benefit (*Familienbeihilfe*) is provided for permanent and habitual residents and it can be claimed on behalf of children who live abroad and its duration lasts until child is 18 years of age or 25 years of age if in education. Access to *Familienbeihilfe* is problematized via procedural requirements, especially proof of residency.

In the UK person is eligible for a child benefit if he or she is responsible for a child under 16 or under 20 if in approved education or training. This benefit is also available for an EU citizen who works in the UK, and is responsible for a child who does not reside in the UK, providing that no other benefits are claimed on behalf of this child in the country of their residence. The benefit is subject to 'claw-back' above a certain level of individual income.

In sum, while the EU regulatory framework for portability of child benefit is relatively straightforward, habitual or other residency requirements may problematize these in practice, especially for circular/temporary migrants. In most cases, due to differences in benefit levels, it would have generally been advantageous for transnational families to claim child benefit, by the parent living in an EU15 member state. However, both CJEU jurisprudence, which permits 'top ups', and the tightening of domestic rules to confine child benefit to co-resident children, mean that "equal treatment" for transnational families of EU migrants is contingent on the country of residence of both parent and child, rather than a right. This is well illustrated by a short presentation of the situation of returnees' access to family benefits in our EU8 countries in our next sub-section.

7.3.5 Family benefits for returnees in the TRANSWEL country-pairs

Mobile EU citizens returning to Bulgaria can face challenges in transferring family benefits due to different approaches to data collection and in establishing entitlement. Questions of who or what is a family also complicate the process of establishing rights. 'Some family benefits in Bulgaria are

means-tested, but German family benefit offices do not collect data on claimants' incomes, which can pose difficulties for migrants returning to Bulgaria wanting to prove eligibility for benefits. Differences in definition of 'family' leads to difficulties in determining whether individuals are entitled to receive family benefits, and in which country' (Amelina et al. 2016a).

There is no childrearing benefit in Estonia and child benefit is residency based. Consequently, child benefit is accessible for all returnees, but this is rather a question of access, rather than portability. For parental leave, returnees must have been either living or working in Estonia for the whole previous year, or must be registered as a resident of Estonia, while working in another EU state. This means that in case of Estonia access to parental leave is quite flexible, contributions made in a second member state are recognised, abroad, and even unemployed returnees may be eligible for parental leave. Our key informants did report, that similarly to our BG/GE case, definitional differences of eligibility and 'family' could make portability of benefits for difficult for transnational families to access.

In Hungary, by contrast, the conditions of access to family benefits are predominantly related to contributions: maternity benefit [Terhességi-gyermekágyi segély, TGYAS], infant care allowance [CSED] and Child Care Fee [Gyermekgondozási díj], each require at least 365 insured days in the last 2 years. Regulation 883/2004 permits portability through the accumulation of social insurance contributions made in other member states (in our case Austria, with similar social insurance-based benefits), and the contributions requirements are relatively flexible (if also relatively long). We might therefore expect returnees, and more mobile migrant workers in Hungary should not face very significant barriers to generating and access their entitlements to family benefits. All returnees may access family allowance [Családi pótlék], a universal provision in Hungary.

Most family benefits in Poland are means-tested and may be claimed by people – including returnees - who reside within Poland for the period for which they will receive the benefits and their family income does not exceed PLN 539.00 per calendar month. Recently a new type of child-rearing benefit, Rodzina 500 plus [Family 500 +] was introduced. It is hybrid of means-tested and residency based family benefits. It is means-tested for the first child, and residency-based for the second and subsequent children.

7.4 Health Insurance

Similarly to pensions, the combination of EU legislation and our transnational country pair regulations on healthcare insurance appear less problematic and less complex than for unemployment, or family benefits. This is especially relevant in relation to the EHIC card. However, the EHIC card is designed exclusively for emergency health treatments and thus does not cover access to healthcare per se. In addition, EHIC is also time-limited and can be used only for the 3 initial months period, past which an EU mobile citizen need to gain additional access to healthcare (see section 4.3.3).

In our BG/GE and HU/AU cases, health insurance is accessed with employment, and eligibility applies from the first day of employment in the country of origin and destination. For returnees to Bulgaria, and temporary/circular migrants, however, three years contributions are required, in order to continue health insurance coverage, with no more than three monthly missing payments. As discussed in section 7.2 (unemployment benefits) returnees to Hungary must be employed in order to access health insurance. Unemployed returnees are covered by health insurance while in receipt of unemployment benefits.

In Sweden EU migrants who are in insured employment can receive healthcare, even without a PIN, although they will need a ‘certificate of residence’ in Sweden. Although this certificate represents a procedural condition, it should enable EU workers on short-term stays to have access to healthcare. However, for those mobile citizens with more precarious employment and higher levels of mobility, access to healthcare is secured with the ‘centre of life’ and intention to settle (securing a PIN), or by having comprehensive health insurance.²⁴ In Estonia, for health insurance an employment contract is needed, with exceptions for children, retired, students, people on parental leave and unemployed. All other returnees need to have private health insurance, or register as unemployed.

Poland also has an insurance-based system, but in the UK access to healthcare is subject to residency rather than employment. In practice in the UK a rather minimal threshold for residency or procedural requirement for proof of residency is established. Returnees to Poland, similarly to Estonia, and as discussed in section 7.2, must be insured or registered unemployed, even if with no right to unemployment benefit.

Table 7.3: Key regulatory conditions governing portability of sickness, health insurance and healthcare in four EU transnational country-pairs

Case	Health insurance	Sickness insurance
Bulgaria-Germany	residency and employment	choice of health insurance
Estonia-Sweden	Employment or centre of life and intention to settle	employment
Hungary-Austria	residency and employment	choice of health insurance
Poland-UK	Residency and employment	earning threshold

Source: TRANSWEL research, 2015/6

In all countries *sickness insurance* is of course linked with employment and insurance contributions but varies significantly. In Germany and Austria there is emphasis is on a choice of health insurance. Individuals can choose type of sickness insurance when assigning for particular health insurance coverage. In Germany, sickness insurance applies from day one of employment, but returnees to Bulgaria would need to have ported previous contributions from Germany, as six months contributions in Bulgaria or other Member State are required there. The case of ES/SE is unusual in our four country-pair cases. In Sweden it is possible to accumulate insured periods of sickness insurance from other member states, but if one did not work previously at all there is a need for an individual to express their intention to stay in Sweden for over a year.

Overall, access to health and sickness insurance varies by country-pair case, but with similar possible vulnerabilities for returnees in three of our four cases. For mobile citizens without employment, return to our EU8 countries may present important barriers to securing appropriate healthcare cover.

²⁴ Requirements as permitted by the ‘Citizens’ Directive 2004/38, see section 3.1 above.

7.5 Pensions

Access and portability of pensions is relatively straightforward, at least in terms of regulatory fit – both transnationally between our EU8 and EU15 countries, and with the assumptions of the EU framework discussed in section three. This is mainly because EU Regulation on free movement was originally designed to protect migrant workers who are in full-time employment over the long-term. Thus, unlike other benefits, portability of pensions appears as the most straightforward, as pension contributions fall into the classic conceptualisation of portability, where contributions in one public pension scheme are recognised in another in a second member state. However, there are differences in length of contributions required in order to be able to make a claim. Although Germany has no direct residency requirements there is a need for at least five years contributions for entitlement although following SSP rules from EU regulation means that Bulgarian contributions can be added to those made in Germany. In the case of UK there is a need for one year contributions and three years residency. The Austrian case is exceptional as there is a need for merely one day contribution, while in Sweden residency of at least one year is most important for provision of (residency-based) basic state pension. Therefore, gateways to pension are structured around length of contributions and residency.

While in Germany EU citizens can claim pension after contributing to the German insurance for at least five years and in Austria EU citizens may apply for pension if they reach pension age and worked in Austria for at least a day. In Sweden EU citizen may apply for GARP (basic state pension) based on residency. Eligibility for GARP can be earned with three years residency but if claimant has lived in Sweden for less than three years his or hers residency in another EU country will be acknowledged. However, for income-based pension (IP and PREP), the criteria of length of residency are not relevant but relevant levels of contributions. In the UK EU citizens can claim State Pension if they reach State Pension age, they have been working for at least a year in the UK, and they have resided there for at least three years. Contributions from other EU countries may be incorporated into their pension. However, circular migrants, although their periods of insurance can be accumulated may face some vulnerability and loss of benefits related to the differences between the pensions systems between which he or she is moving.

Table 7.4. Key regulatory conditions governing portability of selected old-age public pensions in four EU transnational country-pairs

Case	Statutory contributory public pensions
Bulgaria-Germany	no direct residency requirement but five years contributions
Estonia-Sweden	residency of at least one year
Hungary-Austria	one day contributions
Poland-UK	contributions & three years residency

7.6 Summary

Across our four country pairs, in contributory state pensions, EU migrants' access to, and portability of, social security were reported as straightforward and well-understood in practice for all cases. In other policy areas, a number of barriers to access and portability were identified, although there was variation among country-pair cases, as well as by benefit. In unemployment benefits, our research identified procedural conditions, high levels of discretion and regulatory complexity as barriers to access and portability of entitlements. For family benefits, social security system differences, and diversity of welfare regulations, were the main factors which can create barriers to access and portability of entitlements. In health, complexity, cost, and procedural requirements for securing appropriate insurance could, in different cases, present barriers to adequate healthcare cover, particularly in insurance-based health systems. These barriers may present a significant social risk to migrants if they do not have healthcare cover after the first three months of residence.

From a migrant perspective, we can observe that the extensive interlocking of individual eligibility criteria for all benefit types problematize access to, and portability of, specific social security rights. This complex variation of interlocking eligibility criteria is problematized further by strong discretionary, and high procedural requirements. As a result of these complexities we can observe that long-term migrants, who are in uninterrupted employment are more likely to freely exercise their social security rights in the country of migration. Short-term, temporary and circular migrants whose access to rights is problematized by their short-term residency status and discontinued contributions. Consequently, the EU mobile citizen, imagined as a flexible and mobile worker at the heart of EU free movement, is in practice free to move, and has rights to work, but may not generate entitlements to social security. The close analysis of eligibility conditions shows that one-time/long-term migrants are in the most favourable position when discussing EU mobile citizens' access to social security rights. In other words, EU mobile citizens who are less mobile and choose rather sedentarist way of living in the country of destination benefit the most from the coordination of social security rights in the EU. In the next section we explore the mechanisms which produce these dynamics of mobility, work and residence, and their implications for inclusion/exclusion and stratification.

VIII Re-conceptualising portability of social security in the EU: from formal regulations to portability governance

8.1 Dimensions of social security portability governance: interpreting gateway conditions for mobile 'economically active' citizens

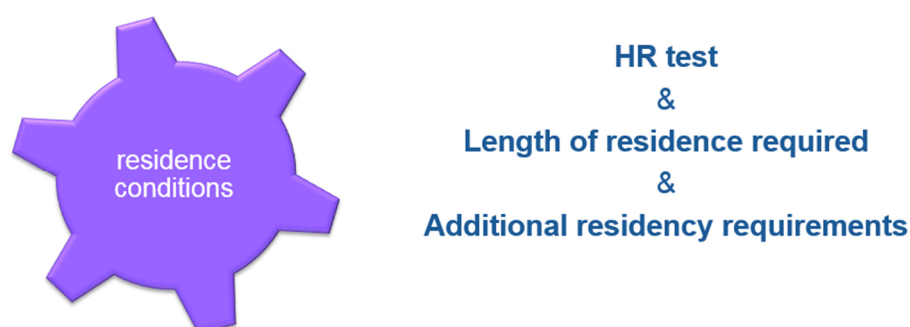
Our investigation exposed that the co-existence of EU and national regulatory requirements for mobile EU workers to secure their social security rights has created regulatory and institutional complexity. This co-existence has shed light on barriers to access and portability of social security. Analysis exposed three main gateways for portability of social security rights:

- **Residency:** co-existence of national and EU residency rules, generating contradictory requirements
- **Employment/contributions:** social security system differences matter – between member states and regarding 'institutional fit' with the assumptions of EU regulatory framework.
- **Operational conditions:** procedural requirements, institutional complexity & administrative discretion

The interplay between these gateways differs across country-pair cases, and benefit types. However, the comparative results exposed conditions at the national level that guard access to social benefits, and thus shape the governance of SSP. Examining in these in more detail shows us that even straightforward aspects of national social security regulations – like length of contributions for entitlement to unemployment insurance, for example, can become rather treacherous for the mobile worker. This is even more the case where the mobile worker is also precariously employed.

First is **residency** [Figure 2], which is a key gateway to portability. It can be tested to greater (SE/SE, HU/AU, PL/UK) or lesser (BG/GE) degree. It also depends on benefit type, with pensions, unemployment insurance and health insurance benefits least likely to be strongly conditional on residence (except in HU/AU). Thus, residency requirements on the one hand act as gateway to, and on the other as barrier to portability of social security rights as some rights cannot be effortlessly portable but need to be earned by acquiring habitual residence (e.g. unemployment assistance, some family benefits).

Figure 8.1. Interplay of residency conditions between member states and EU regulatory framework governing social security portability

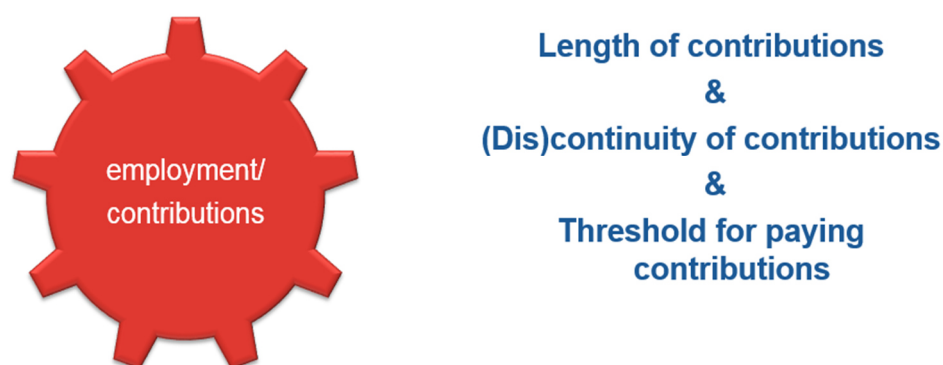


Source: authors' own elaboration

The more of these residence conditions that apply in any one case, and the longer the period of residence that is required, the more temporary migrants and more mobile migrants (including those with more experience of irregular employment) are likely to be excluded from both access and then portability of social security. The exclusionary logic here is oriented to sedentarism, and limits to mobility, with stratifying effects for the most precariously employed and the most mobile migrants.

Frequently incorporation into the host country's welfare system not only involves specifying – and proving – a period of residency but also contributions linked with employment. Portability of some social security rights may permit recognition of previous contributions from another welfare systems but for most of them they have to be made in the countries of destination. Thus, second important gateway to portability are **contributions** [Figure 3], their length as well as continuity, and the thresholds at which contributions are payable. Continuity of contributions is of particular importance for the EU mobile citizens as it facilitates greater flexibility and possibly accumulation of contributions over time and across different welfare systems. Importantly access to certain benefit may be limited by introduction of earnings thresholds which often acts as a gateway to portability as well²⁵. Earnings thresholds as a measure to limit access to social benefits are important when discussing mobile citizens as often they worked in low-paid employment and therefore do not meet required thresholds, especially where these thresholds are used to determine migrants' legal status as 'retained workers', 'jobseekers' or 'EU nationals' (see section 3.2).

Figure 8.2. Interplay of employment and contributions conditions between member states and EU regulatory framework governing social security portability



Source: authors' own elaboration

The longer and more continuous contributions required, the more that our combined EU and national SSP regulation exhibit an assumption of inclusion around the model EU 'worker', fulfilling the ideal-typical full-time regular employment role.

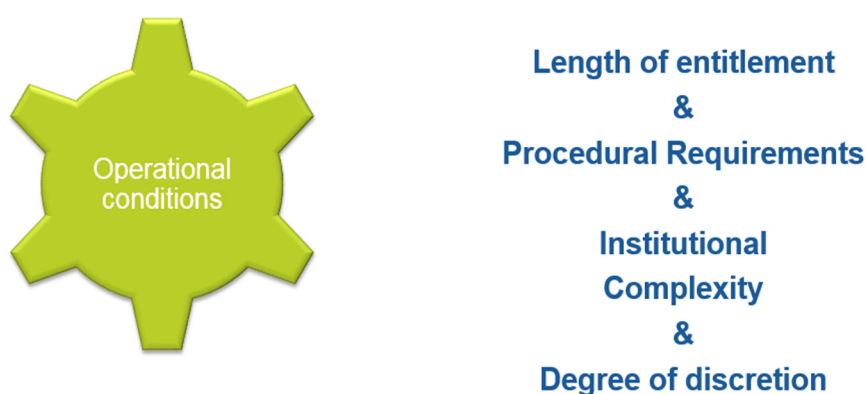
Furthermore, for EU migrants, the question of being in formal, regular, non-precarious employment is not just a question of 'making contributions', unlike for nationals. The role of employment history, quality, length, and pay radically shape EU migrants' legal status and therefore their ability to generate entitlements, and cut across residency requirements (e.g. in proving centre of life, intention to settle, or ability to reside in a member state "without recourse to public funds". Thus if we consider the intersection of the EU framework and domestic rules, we can see that those migrants with fragmented employment records, due to unemployment or caring activities, and those in precarious employment,

²⁵ See footnote on methodological difficulties in generating comparable data on thresholds; future publications on this strand of TRANSWEL work will seek to incorporate empirical analysis of thresholds.

which do not conform to the notional (and often implicit or informal) ‘ideal-type’ of employment face difficulties in generating entitlements, in securing access and also in portability of their social security rights.

Provision of benefits is problematized further by the **high procedural** and **strong discretionary requirements** [Figure 4] that constitute our third gateway to the portability of social security rights and may involve activities in countries of migration and emigration. Procedural requirements include, but are not limited to, intricate registration procedures, identification numbers procurement, supply of documents that proves centre of life and intentions to settle, attendance at special meetings, workshops, medical tests etc. Discretion reflects on the important role that decision makers at the administrative level play in a provision of benefits. Regulations on access to social security rights are often ambiguous, thus decision making process may be strongly discretionary and decision are made on a case-by-case basis.

Figure 8.3 Interplay of operational conditions between member states and EU regulatory framework governing social security portability



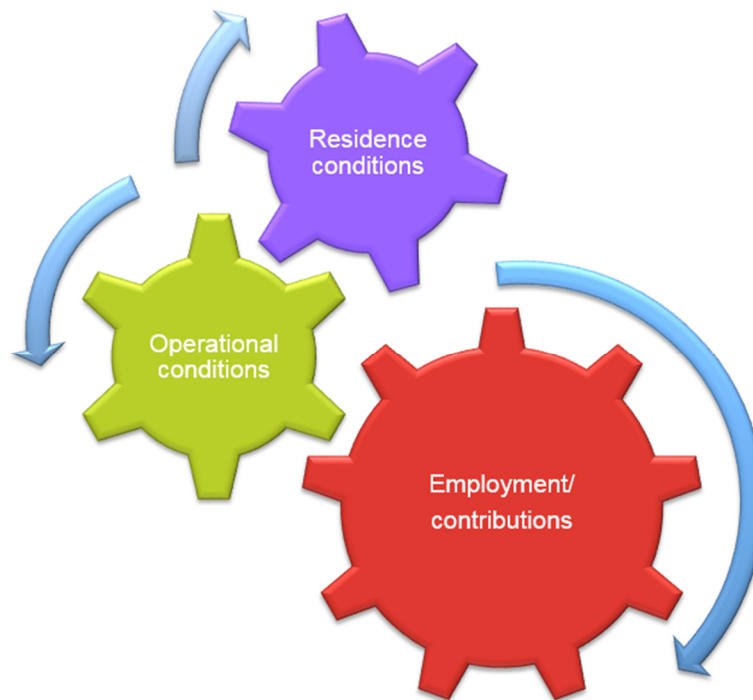
Source: authors' own elaboration

The operational conditions identified here have strongly exclusionary and stratifying logics against mobility. In all our cases, complex procedural requirements and institutional arrangements function to enhance the residence conditions which are established in the intersection of EU and national welfare system regulations. Migrants who move more often are positioned as exceptional cases in welfare systems. Being positioned in this way means that they become subject to greater degrees of discretion among decision-makers, which increases the ambiguity of their access to and portability of social security and as procedural burdens of proof (e.g. documentary evidence of employment, centre of life, attachment to the labour market) increase in such cases, the more mobile migrant has both less oversight of what their legal position is (how they can generate entitlements? What are their entitlements) and is subject to more regulatory intervention and scrutiny.

8.2 A dynamic conceptualisation of portability governance: gateway conditions in action

As we saw in section two above, currently portability is perceived/understood as a linear process [Figure 1]. We challenge this linear dimension of portability as our close exploration of conditionality and gateways to access of social security benefits shows more dynamic dimension of access and portability [Figure 5]. As shown this dynamic dimension of portability is a result of EU and member states regulations that govern access to and portability of social security rights.

Figure 8.4 A dynamic conceptualisation of social security portability governance between member states and EU regulation



Source: authors' own elaboration

This conceptualisation is dynamic and moving and we expect that this will directly affect the migrant who experiences it – and may move differently depending which benefit you applying for, even in the same transnational country-pair. The cog metaphor is also designed to show the interlocking and mutual dependence of these gateway conditions, which can easily crush the migrant themselves.

It is this conceptualisation which also enables us to see that although the EU provides a represents a densely regulated domain, designed to facilitate SSP, in fact, the way in which EU and national regulations are enmeshed together in specific cases can prevent migrants from generating entitlements, let alone accessing or porting them in a linear fashion.

8.3 Inclusion, exclusion and stratification in EU portability governance

As we have seen above, access to social security and portability of social security rights is often highly conditional, For this research three main migrant categories were identified: the one-time migrant, the returnee and the temporary (including the circular) migrant as the analytically relevant criteria. As pointed out previously individual conditions such as residency, contributions and operational conditions affect an individual's access to social rights and the sum of these conditions disclosure extent to which portability of social rights is enabled or limited.

The temporary/circular migrant is particularly significant analytical criteria as exploration of conditions under which this type of migrant might experience portability exposes whether different regulations have systematic logics of inclusion or exclusion, but moreover provides an overview of portability of social security rights as the central element of transnational multi-scale welfare in the enlarged European Union.

Empirical analysis shows that regulations have specific assumptions regarding inclusion or exclusion for circular migrants. These assumptions vary by country and/or policy area and circular migrants' inclusion and exclusion is constructed mainly around residency and contribution requirements. The longer the time that circular migrant spent outside of the country of immigration [for example as a returnee in the country of origin] the more discretionary access to social security rights becomes. Further circular migrants with long length of previous residency and contributions, alongside with short absence are more likely to exercise their social security rights upon return. More mobile migrants may also risk their ability to secure 'habitual residency' in either member state. Circular migrants may find that previous residency and/or contributions are unrecognized and in practice they have to re-establish their position within welfare state of the country of destination..

The regulatory and institutional complexity, and degree of discretion affecting access and portability of benefits (apart from EHIC and pensions) in three ES/SE, HU/AU and PL/UK of our four country pairs is likely to favour educated and better-off migrants who can master the system more easily, and disadvantage those with less access to information, lower language skills, in short term or temporary employment, and those who are more mobile between the two countries.

Evidence from this research shows that portability of social security rights does not endorse or facilitate mobility per se, but rather shapes free movement for the purpose of settled employment. Thus, complex migration trajectories, such as those of temporary migrants, limit access to social benefits and consequently problematize their portability of social rights. SSP as a feature of transnational welfare in the enlarged European Union, may enable individuals working as an employee (or looking for employment), working as a self-employed person, studying, being self-sufficient or retired to exercise their treaty rights across EU countries. It does not facilitate 'enhanced mobility'. Consequently, the regulation on portability at the EU and national levels promote sendentary model of rights, which fits with the need for use of migration to satisfy labour demand. The free movement and coordination of social security rights assists merely in easier incorporation of EU migrants into the welfare systems of countries of immigration.

IX Conclusions: thinking transnationally about portability governance: some empirical and analytical observations

- How are migrants' social security rights structured transnationally in regulations?
- How do welfare systems' conditionalities organize, condition, and set limits to the acquisition and portability of social security rights?

The barriers to access and portability identified in our research have practical effects. They embed contingent selectivity in social security portability regulations. Dynamic relations of mobility, work and residence are jointly produced in the interplay between the EU regulatory framework and member states (Carmel 2013, Carmel and Paul 2013). We can make two key empirical observations.

From a policy perspective, this 'joint production' means that EU regulations, framed and designed to support social rights for mobile workers, while also promoting flexible and responsive labour markets do not meet these policy goals. Our results show that these EU regulations, embedded in the unequal political economy of increasingly flexible labour markets, are used by member states to secure 'sedentarist' and exclusionary logics of access and portability of social security. As a result, the mobile EU person that is privileged in this jointly produced regulation is the regularly employed, one-time and long-term migrant. The flexible, mobile worker, especially in lower-skill employment, who is supposedly oiling the wheels of EU economic growth, is more likely than their less mobile counterparts, to find themselves excluded from, rather than included in, access and portability. And the very characteristics of EU legislation itself – especially the residency tests - provides a major contribution to explaining this result.

From a migrant perspective, we can also observe that this 'joint production' of interlocking – and often contradictory - regulations are adopted, institutionalised and interpreted in our transnational cases in ways which are so complex that they cause barriers and blockages of themselves. This complexity must be negotiated by both decision-makers and mobile citizens, and leads to uncertainty, and misunderstandings among decision-makers. This is especially notable in the transnational cases of HU/AU, ES/SE and PL/UK, and especially affects benefits for people of working age. The phase of research for TRANSWEL reported on there did not directly examine migrants' experiences of access and portability; the project will be reporting results on this in 2016 (quantitative survey) and 2017 (qualitative interviews). However, given the contested and contradictory characteristics of regulatory conditions reported by key informants and policy experts, our research so far raises concerns about whether even relatively well-resourced and socially embedded migrants can fully access their social security 'rights'.

We can make three further observations with conceptual implications. First, we have shown the limits of existing definitions of portability in the literature. Such definitions have taken for granted (or ignored) the complexity of conditions which shape access to and portability of social security. In this paper we have developed a more elaborate and nuanced conceptualization of portability, which reflects how co-existing and jointly produced conditions shape this aspect of EU workers' social rights. This conceptualization draws attention to the interlocking characteristics of social security portability regulation, and the need to account for legal conditions, but also for administrative regulations and administrative practices in shaping migrants' social security.

Second, that EU social 'rights' remains something of a distant dream, even for this institutionally and legally privileged group of migrants – the EU citizen (worker). The degree of discretion which is either formally required (e.g. in tests of 'genuine and effective work' in the UK, or of 'intentions to settle in Sweden) or which is produced by institutional complexity (e.g. in co-existence of multiple definitions of residency – which to choose? - in Austria), demonstrates that there are no 'rights' to social security and

portability, except in two specific and important cases. First, in the case of pensions – which suits the regularly employed long-term migrant for whom social security co-ordination was first imagined. Second in the case of emergency health, the case of EHIC: the key instance of an European (EU-wide) social right. Its limitations remain profound – covering emergency care, not healthcare in general, the EHIC is also time-limited. Even if in practice the 3-month limit on using EHIC is not easy to enforce, the very existence of this short-term limit highlights the more general rule: in order to be a ‘proper’ EU citizen (see Anderson 2013, Soysal 2012), you need to first, move, but then you need to stay, settle in a national state.

Third, that who is to be included, the favoured ‘European’ remains oriented around specific privileges for a particular ‘ideal-type’ of worker – this worker is skilled, in regular employment, might be a man or a woman, but above all should be settled or long-term. So on the one hand, we have EU policies, directives and regulations promoted as assisting workers’ mobility (notably to promote ‘flexible’ and ‘innovative’ economic growth), and on the other, this EU regulation is used by member states to exclude the most mobile citizens and the more vulnerable workers from entitlement to claim social security as they move across borders in the EU. This is being done at precisely the time when such mobile and precarious workers are becoming more significant the political economy of the EU.

ANNEX 1 FUNCTIONAL EQUIVALENTS BY POLICY AREA AND INDIVIDUAL COUNTRY

Functional equivalents of entitlements for EU8 TRANSWEL countries

Types of benefits	UK-PL	DE-BG	AT-HU	SE-ES
UNEMPLOYMENT				
Unemployment insurance [contributions based]	Zasiłek dla bezrobotnych	Обезщетение за пълна безработица	Álláskeresési járadék	Töötuskindlustushuvitis
Unemployment assistance	Pomoc społeczna	Частична или временна безработица	Foglalkoztatást helyettesítő támogatás	Töötutoetus
HEALTH INSURANCE				
Sickness insurance benefit	Zasiłek chorobowy	Парични обезщетения по болест	Táppénz	Töövõimetushüvitis
Health insurance	Ubezpieczenie zdrowotne [NFZ]	Задължително здравно осигуряване	<u>Egészségügyi szolgáltatási járulék</u>	Tervisekindlustus/haigekassa
PENSION				
Old age pension	Emerytura		Öregségi nyugdíj	Vanaduspension
FAMILY BENEFITS				
Maternity benefits [leave]	Zasiłek macierzyński	Обезщетение за бременност и раждане	Terhességi-gyermekágyi segély (TGYÁS)	Sünnitushüvitis
Parental leave plus associated benefits	‘Urlop tacierzyński’	родителски отпуск и други семейни помощи и обезщетения	Gyermekgondozási díj	Vanemahüvitis
Parental allowance [Child rearing benefit]	Zasiłek wychowawczy	Обезщетение за отглеждане на малко дете	Gyermekgondozási segély	Lapsehooldustasu
Child benefit	Zasiłek rodzinny	Месечно обезщетение за отглеждане на дете до завършване на средно образование, но не повече от 20-годишна възраст	<i>Családi pótlék</i>	Lapsetoetus

Functional equivalents of entitlements for the EU15 TRANSWEL countries

Types of benefits	UK-PL	DE-BG	AT-HU	SE-ES
UNEMPLOYMENT				
Unemployment insurance	Contribution-based JSA	Arbeitslosengeld I [ALG I]	Arbeitslosengeld	inkomstbortfallsförsäkring
Unemployment assistance	Income-based JSA	Arbeitslosengeld II [ALG II]	Notstandshilfe	grundförsäkring
HEALTH INSURANCE				
Sickness insurance benefit	Statutory Sick Pay (SSP)	Krankengeld	Krankengeld	sjukpenning
Health insurance	NHS	Gesetzliche Krankenversicherung	Krankenversicherung	Hälso- och sjukvård i Sverige
PENSION				
Old age pension	The basic State Pension	Compulsory old age	Gesetzliche Pensionsversicherung	Allmän pension
FAMILY BENEFITS				
Maternity benefits [leave]	<i>Maternity Allowance</i> <i>Statutory maternity pay (SMP)</i>	<i>Mutterschaftsgeld</i>	<i>Wochengeld</i>	Graviditetspenning
Parental leave plus associated benefits	N/A	<i>Elterngeld</i> <i>Elternurlaub</i>	N/A	Föräldraledighet
Parental allowance [Child rearing benefit]	N/A	N/A	<i>Kindetbetreuungsgeld</i> <i>Einkommensabhaengiges</i> <i>Kinderbetreuungsgeld</i>	Kommunalt vårdnadsbidrag
Child benefit	Child benefit	<i>Kindergeld</i>	<i>Familienbeihilfe</i>	Barnbidrag

ANNEX 2: SAMPLE TABLE TO COMPARE WELFARE CONDITIONALITIES ON SSP FOR THREE CATEGORIES OF MIGRANT

[illegible]

ANNEX 3: CRITERIA FOR WEIGHTING CONDITIONS IN TRANSNATIONAL TABLES

EU REGULATORY/LEGAL BASIS

1. Clarity and extent of contention about the EU –regulation of right to portability
 - a. Generous
 - b. Limited
 - c. None (no EU regulated right)
- The entire TRANSWEL project is premised on an investigation into the EU as a ‘portability rights’-granting domain, starting from the assumption that portability can be understood sociologically as a regime comprising several elements (regulations, discourses, practices), which each interact to shape social inequalities as a result.
- ‘Generous’ means that the right is clear, specific, and offers a distinct set of rights.
- ‘Limited’ means that there are portability rights established in EU policy/regulation, but these might be time-limited, or subject to ambiguity meaning that they can be limited in particular cases.
- ‘None’ means that we believe that there is no clear and direct regulation of portability at EU level.

RESIDENCY

2. Subject to **habitual residency**/centre of life – test

- a. Yes
- b. No

- The HR test is in most cases a key ‘condition’ to portability for EU migrants, although it is tested to a greater or lesser degree for different categories of migrant and we suspect also that it is tested with a greater or lesser degree of specificity (and demands) in different countries.

3. Length of residence

- a. Very short (> 3 months)
- b. Short (3-5 months)
- c. Medium (6-11 months)
- d. Long (12mths-4 years)
- e. Permanent (5 years or more)

- Residency was a key criteria in all cases, sometimes as a barrier to portability and sometimes simply adding to the complexity of the regulation. Our categorisations are organized on the basis of the relevance of these lengths of time to regulations in our country-pair cases.
- In some cases the lengths of time relate directly to EU regulations (esp 883/2004), and in some cases these requirements are independent of EU regulation.

4. Additional residency requirements

- a. Yes
- b. No

- In some cases – especially, of course, family benefits, but also assistance and even health insurance– additional residency requirements can establish significant conditions on access to benefits for mobile people (contributing to our sum of conditions for portability).

CONTRIBUTIONS

5. Length of employment contributions

- a. Very short (> 3 months)
- b. Short (3-5 months)
- c. Medium (6-11 months)
- d. Long (12mths-4 years)
- e. Permanent

6. Employment contributions continuity (the period over which contributions might count)

- a. Continuous
- b. Discontinuous

- For mobile people, it is not just the length of contributions to an insurance scheme which matters, but also the continuity of contributions - over what time period are, for example, migrants expected to make continuous contributions in order to generate entitlement?
- As a result, length of contributions and continuity should be assessed jointly.
- To give an example, if a person must make 12 months contributions over 2 years to establish entitlement to unemployment insurance (Germany), this is less of a barrier to portability for our Bulgarian migrants than the same length of contributions over 12 months.

7. Threshold for paying contributions (as % average pre-tax earnings OR as % of minimum wage)

- a. None
- b. Low
- c. High
- d. Not applicable

- This condition could be important in practice for our mobile EU citizens; its intrinsic significance is a bit harder to judge. We have included it on the grounds that we would expect our mobile EU citizens to be disproportionately in lower wage employment than their national citizen counterparts (but we have at the moment next to no evidence to suggest this is the case, due to lack of access to data in several country-pairs).
- However, if it is the case, then a high threshold wage before you pay contributions will disproportionately affect our participants, because they are less likely to earn the required amount to make their contributions.
- As we are missing a lot of the data on thresholds, our column here does not follow the conditions set out above. Once we have the monetary amounts, we can calculate these as % of average earnings, and as % of minimum wage (where available) and present this data.

OPERATIONAL CONDITIONS

8. Length of benefit entitlement

- a. Very short (> 3 months)
- b. Short (3-5 months)
- c. Medium (6-11 months)
- d. Long (12 mths-4 years)
- e. Permanent (5 years or more)

- For one-time migrants, if the time limit is very short, this may affect their position in relation to limits on 'recourse to public funds', or even their right to reside in the country of migration. For circular migrants, additional specifications about previous receipt of benefit, and the implications of extensive mobility for benefit receipt, make this condition perhaps especially important.

9. Additional procedural requirements

- a. High (3 or more requirements)
 - b. Medium (2)
 - c. Low (1)
 - d. None
- We identified 3 common procedural requirements, which vary by benefit type and by country-case pair.
 - o Attendance at meetings/training/medical tests more than once a month. Equivalent to 2 requirements, as we believe it is so significant for migrants.
 - o Formal registration for a special number or card, involving an interview/attendance at special tax or social insurance office. (1 requirement)
 - o Requirement to register as unemployed (even if not entitled to benefit) in order to receive another benefit. (1 requirement).

10. Discretion

- a. Strong (highly discretionary)
 - b. Weak (discretion limited)
- Our best data on this comes from summaries data from Key Informants, as well as what is implied by what our AU/HU team called 'grundsätzlichkeit' – the 'in principle', answer, which leaves actual entitlement in specific cases uncertain, and therefore at the discretion of the decisionmaker.

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